16A C.J.S. Constitutional Law § 600

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

2. Contracts of Private Corporations as Within Constitutional Protection

a. Contracts with Members and Stockholders

§ 600. Contracts between corporation and stockholders as within constitutional protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

Contracts between a corporation and its stockholders are within the protection of the constitution.

Distinct from the contract on the stockholder's part to pay for stock, there is a contract relating to the nature of the corporate venture which is said to exist between the stockholders themselves,[1] or between the corporation and its stockholders or members,[2] which is within the constitutional prohibition against the impairment of the obligation of contracts. Contracts made by corporations with stockholders in the form of loans,[3] or with respect to the rights of stockholders on withdrawal,[4] or their rights to redeem stock,[5] are under the protection of the constitution and may not be impaired by a change in the charter without the consent of the stockholders affected.

A charter of a private corporation is a contract and is entitled to protection under the Contract Clause.[6] Generally, the contract rights of stockholders are fixed by the charter and the constitutional and statutory provisions in effect at the time of the acquisition of stock by them,[7] and one acquiring stock is considered to have consented in advance to such changes in the charter or in

the contract as the laws in effect at that time permit,[8] including the right reserved in the state to alter and amend state laws relating to corporations.[9] Furthermore, where such right is reserved, an amendment of the charter by legislative act or by the prescribed majority of the stockholders pursuant thereto does not necessarily constitute a forbidden impairment of the contracts of preexisting stockholders.[10]

This power reserved to amend corporate charters is not unlimited, however, and its exercise is subject to the impairment provision as well as to other provisions of the federal and state constitutions.[11] Moreover, as may be suspected, there is a considerable lack of harmony in the decisions as to its limits.[12]

Police power; eminent domain.

Insofar as contracts between corporations and their stockholders are impaired by a valid exercise by the State of its police powers, the impairment is not violative of the constitutional prohibition.[13] A legislature may, without impairing contractual obligations, impose new burdens upon corporations, in addition to those contained in the charter, which are in the public interest and safety, and legislation which in effect only regulates the manner in which the franchises of a corporation are to be exercised and that do not interfere substantially with the object of the grant conferred by its charter do not impair the contract.[14]

The terms of a contract between a corporation and its stockholders as to the ownership of stock are subject to the exercise of the power of eminent domain, and such parties cannot by their contract prevent the exercise of this power of the State in contravention of the terms of the contract.[15] Thus, in the exercise of its power of eminent domain, the legislature, at the instance of the holders of a majority of the stock, and for the promotion of a public purpose, may authorize the condemnation of the shares of the minority stockholders of the corporation.[16]

Consolidation.

Under a reserved power to alter or amend corporate charters, an act authorizing a consolidation of an existing corporation with another on a vote of a prescribed majority of the stock is valid and binding on the dissenting stockholders.[17]

Impairment by private corporation.

The impairment prohibition contained in the Federal Constitution is aimed at the legislative power of the State and has no application to the doings of private corporations.[18] On the other hand, a contract between two corporations cannot legally contain terms which will be violative of a contract between one of the corporations and its stockholders or which will alter the contract relations of different classes of stockholders as between such classes.[19]

Footnotes

1 Cal.—Patek v. California Cotton Mills, 4 Cal. App. 2d 12, 40 P.2d 927 (1st Dist. 1935).
N.Y.—Breslav v. New York & Queens Elec. Light & Power Co., 249 A.D. 181, 291 N.Y.S. 932 (2d Dep't 1936), aff'd, 273 N.Y. 593, 7 N.E.2d 708 (1937).

2 Cal.—Patek v. California Cotton Mills, 4 Cal. App. 2d 12, 40 P.2d 927 (1st Dist. 1935).
Tex.—Eastland Building & Loan Ass'n v. Williamson, 78 S.W.2d 703 (Tex. Civ. App. Eastland 1934), writ refused.

3 Ga.—Interstate Bldg. & Loan Ass'n v. Wooten, 113 Ga. 247, 38 S.E. 738 (1901).

4 U.S.—Treigle v. Acme Homestead Ass'n, 297 U.S. 189, 56 S. Ct. 408, 80 L. Ed. 575, 101 A.L.R. 1284 (1936).

5 Mich.—Sutton v. Globe Knitting Works, 276 Mich. 200, 267 N.W. 815, 105 A.L.R. 1447 (1936).

6 U.S.—American Hosp. Ass'n v. Hansbarger, 600 F. Supp. 465 (N.D. W. Va. 1984), judgment aff'd, 783 F.2d 1184 (4th Cir. 1986).

7 N.Y.—Richards v. Schwab, 101 Misc. 128, 167 N.Y.S. 535 (Sup 1917).
Or.—Schramm v. Done, 135 Or. 16, 293 P. 931 (1930).

8 Ill.—Teschner v. Chicago Title & Trust Co., 59 Ill. 2d 452, 322 N.E.2d 54 (1974).

9 Cal.—Demello v. Dairyman's Co-Operative Creamery, 73 Cal. App. 2d 746, 167 P.2d 226 (4th Dist. 1946).
Ohio—Opdyke v. Security Sav. & Loan Co., 59 Ohio L. Abs. 257, 99 N.E.2d 84 (Ct. App. 8th Dist. Cuyahoga County 1951), judgment aff'd, 157 Ohio St. 121, 47 Ohio Op. 97, 105 N.E.2d 9 (1952).

10 U.S.—Hottenstein v. York Ice Machinery Corporation, 136 F.2d 944 (C.C.A. 3d Cir. 1943).
Ohio—Daus v. Otis Steel Co., 26 Ohio Op. 99, 38 Ohio L. Abs. 153, 11 Ohio Supp. 94 (C.P. 1942).
Wis.—Milwaukee Sanitarium v. Swift, 238 Wis. 628, 300 N.W. 760, 138 A.L.R. 521 (1941).

11 N.J.—Buckley v. Cuban American Sugar Co., 129 N.J. Eq. 322, 19 A.2d 820 (Ch. 1940).

12 N.Y.—Breslav v. New York & Queens Elec. Light & Power Co., 249 A.D. 181, 291 N.Y.S. 932 (2d Dep't 1936), aff'd, 273 N.Y. 593, 7 N.E.2d 708 (1937).

13 Fla.—Therrell v. Smith, 124 Fla. 197, 168 So. 389 (1936).

Abandoned property of stockholder

Where there was no contractual arrangement between a corporation and its stockholders with respect to the disposition of stock or dividends in the event of an owner's failure to claim them, there was no impairment of such contracts by an escheat statute enacted subsequent to the creation of such obligations but only an exercise by the State of its regulatory power over abandoned property.

U.S.—Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).

14 U.S.—American Hosp. Ass'n v. Hansbarger, 600 F. Supp. 465 (N.D. W. Va. 1984), judgment aff'd, 783 F.2d 1184 (4th Cir. 1986).

15 Mass.—In re Opinion of the Justices, 261 Mass. 523, 159 N.E. 55 (1927).

16 U.S.—Offield v. New York, N. H. & H. R. Co., 203 U.S. 372, 27 S. Ct. 72, 51 L. Ed. 231 (1906).

17 Mich.—Dratz v. Occidental Hotel Co., 325 Mich. 699, 39 N.W.2d 341 (1949).
N.Y.—Beloff v. Consolidated Edison Co. of New York, 300 N.Y. 11, 87 N.E.2d 561 (1949).
Ohio—Opdyke v. Security Sav. & Loan Co., 157 Ohio St. 121, 47 Ohio Op. 97, 105 N.E.2d 9 (1952).

18 Ill.—Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882 (1920).

19 Va.—Craddock-Terry Co. v. Powell, 181 Va. 417, 25 S.E.2d 363 (1943).

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2. Contracts of Private Corporations as Within Constitutional Protection

a. Contracts with Members and Stockholders

§ 601. Taxation of corporate shares

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

In the absence of an express contract not to increase or otherwise modify the state tax on corporate shares, a statute levying new or additional taxes on the shares is not void.

In the absence of an express contract not to increase or otherwise modify the state tax on corporate shares, a statute levying new or additional taxes on the shares is not void.[1]

Footnotes

1 U.S.—Roberts & Schaefer Co. v. Emmerson, 271 U.S. 50, 46 S. Ct. 375, 70 L. Ed. 827, 45 A.L.R. 1495 (1926).

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a. Contracts with Members and Stockholders

§ 602. Creating, enlarging, or diminishing stockholders' liability

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

A contract of a stockholder as to the measure of the stockholder's liability for the debts of the corporation is subject to the laws in force at the time the corporation was chartered, and the contract cannot defeat a legitimate exercise of the police power.

The contract of a stockholder as to the measure of the stockholder's liability for the debts of the corporation is subject to, and not impaired by, a constitutional provision or a statute in force at the time the corporation was chartered.[1] Furthermore, the contractual liability of stockholders with corporations affected with a public interest is subject to the possible exercise of governmental authority in the enactment of laws relating to such liability, and stockholders' contracts cannot defeat a legitimate exercise of such police powers.[2]

Subrogation.

A statute permitting a stockholder, who has paid a proportionate share of the debts of a solvent corporation, to be subrogated to a creditor's claim against the corporation does not impair the obligation of the contract between the stockholder and the corporation or between the stockholders inter se[3] or between the creditors and the corporation.[4]

New construction of statute.

The fact that a constitutional provision as to the liability of stockholders of a certain type of corporation has been given a new meaning in applying a statute enacted after the stockholders became such does not impair their contract where such new interpretation is the product of independent judgment of the court and has not been adopted because the statute required it.[5]

Footnotes

1 Ga.—Federal Deposit Ins. Corp. v. Beasley, 193 Ga. 727, 20 S.E.2d 23 (1942).
Wis.—Cleary v. Brokaw, 224 Wis. 408, 272 N.W. 831 (1937).

2 Fla.—Therrell v. Smith, 124 Fla. 197, 168 So. 389 (1936).

3 Cal.—Patek v. California Cotton Mills, 4 Cal. App. 2d 12, 40 P.2d 927 (1st Dist. 1935).

4 § 606.

5 U.S.—Stockholders of Peoples Banking Co. of Smithsburg, Md. v. Sterling, 300 U.S. 175, 57 S. Ct. 386, 81 L. Ed. 586 (1937).

16A C.J.S. Constitutional Law § 603

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§ 603. Statutory alteration of liability of stockholders for debts of corporation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

The statutory liability of stockholders for debts of the corporation already incurred may not be altered.

The statutory liability of the stockholders for the debts of a corporation establishes a contractual relation between the stockholders and the creditors which, as to debts already incurred, may not be altered without impairing the obligation of the contract as to one party or the other,[1] and this is true irrespective of any reservation of power to alter or amend corporate charters.[2] Thus, the individual liability of the stockholders for debts of the corporation already incurred may not be increased by statute,[3] nor can the State exempt stockholders from an existing liability for corporate debts already contracted.[4]

Footnotes

1 U.S.—Badger v. Hoidale, 88 F.2d 208, 109 A.L.R. 798 (C.C.A. 8th Cir. 1937).

N.C.—Hood ex rel. United Bank & Trust Co. v. Richardson Realty, 211 N.C. 582, 191 S.E. 410 (1937).
S.D.—Federal Deposit Ins. Corp. of Washington, D. C. v. Ensteness, 68 S.D. 467, 4 N.W.2d 209 (1942).
Wis.—Cleary v. Brokaw, 224 Wis. 408, 272 N.W. 831 (1937).

2 Cal.—Rainey v. Michel, 6 Cal. 2d 259, 57 P.2d 932, 105 A.L.R. 148 (1936).

3 Cal.—Rainey v. Michel, 6 Cal. 2d 259, 57 P.2d 932, 105 A.L.R. 148 (1936).

4 Ohio—Squire v. Cramer, 64 Ohio App. 169, 17 Ohio Op. 499, 28 N.E.2d 516 (8th Dist. Cuyahoga County 1940).
Tex.—Gossett v. Hamilton, 133 S.W.2d 297 (Tex. Civ. App. Fort Worth 1939), writ dismissed, judgment correct.

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§ 604. Enlarging powers or changing purpose of corporation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

Minority stockholders who do not assent thereto cannot be bound by statutory alterations of the charter that fundamentally change the purposes of the corporation.

The State cannot bind a nonassenting minority stockholder by any alteration of the charter which devotes the funds of the corporation to a purpose fundamentally different from that stated in the charter[1] or which provides for a method of management wholly different from that established by the charter.[2]

On the other hand, where the right of amendment is reserved by statute or by the charter, an exercise of such power, in good faith, which does not change the essential character of the business but authorizes its extension on a modified plan, is not unconstitutional.[3] Thus, a statute is not unconstitutional, as an impairment of the rights of minority stockholders, where it merely grants to the corporation additional powers or privileges or more adequate means of effectuating the corporate objects.[4]

Footnotes

1 U.S.—Wright v. Minnesota Mut. Life Ins. Co., 193 U.S. 657, 24 S. Ct. 549, 48 L. Ed. 832 (1904).

2 Minn.—State v. Great Northern Ry. Co., 100 Minn. 445, 111 N.W. 289 (1907).

3 U.S.—Wright v. Minnesota Mut. Life Ins. Co., 193 U.S. 657, 24 S. Ct. 549, 48 L. Ed. 832 (1904).

4 Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

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§ 605. Law altering remedy to enforce liability

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745

The mere alteration of the remedy for the enforcement of the stockholders' liability is not unconstitutional.

The remedy by which a corporation or its creditors can avail themselves of the personal liability of stockholders may be changed by statute without unconstitutionally impairing contractual obligations[1] provided the constitution of the state does not itself fix the method of procedure or limit the methods allowable.[2] Moreover, under a constitutional or statutory reservation of the right of repeal or alteration of statutes, a stockholder is, on becoming such, chargeable with notice that a new remedy could be imposed should the first prove inadequate.[3] Thus, a statute may not be declared void on the ground that it provides an additional or more effective remedy than that available for the enforcement of the stockholder's obligation at the time such obligation was created,[4] and the mere fact that the new remedy is more onerous than the one it replaces does not constitute a constitutional objection.[5]

Nevertheless, a statute which purports to affect merely the remedy or manner of enforcing the liability of stockholders for existing debts of the corporation is void if, in fact, it deprives the creditors or the stockholders of substantial rights which have

arisen by contract under the former law.[6] Where, however, the liability imposed by a state constitution is construed to be a minimum and not a maximum, the fact that a statutory amendment to the enforcement procedure is viewed as an enlargement of the substantive liability for debts subsequently contracted will not render it invalid as an unconstitutional impairment.[7]

Enforcement by receiver or other officer.

Retroactive statutes changing the manner of enforcing the statutory liability of stockholders from an action brought by a creditor or creditors to an action by a receiver, trustee, or a specified state officer for the benefit of the corporation and its creditors have, in some cases, been sustained as affecting only a matter of remedy.[8] By other authorities, however, these statutes have been declared void as impairing the obligation of the creditor's contract by depriving the creditor of a right to which he or she was entitled under the law in force when the contract was made.[9] A statute authorizing the appointment of receivers of the property of a corporation is not unconstitutional as against a mortgagee although it deprives the mortgagee of the right to foreclose the mortgage in some other court.[10]

Footnotes

1 U.S.—Shriver v. Woodbine Sav. Bank of Woodbine, Iowa, 285 U.S. 467, 52 S. Ct. 430, 76 L. Ed. 884 (1932).
Power in legislature and courts
A provision of a state constitution requiring the liability of bank stockholders to amount of their shares was effective to impose substantive liability upon the stockholders in banks for the debts of the banks but did not take from the legislature the power to provide statutory remedies, nor, in the absence of statutes, did it take such power from the courts.
U.S.—Stockholders of Peoples Banking Co. of Smithsburg, Md. v. Sterling, 300 U.S. 175, 57 S. Ct. 386, 81 L. Ed. 586 (1937).

2 Utah—Lynch v. Jacobsen, 55 Utah 129, 184 P. 929 (1919).
Constitutional limitation on procedure
Or.—Skinner v. Davis, 156 Or. 174, 67 P.2d 176 (1937).

3 U.S.—Stockholders of Peoples Banking Co. of Smithsburg, Md. v. Sterling, 300 U.S. 175, 57 S. Ct. 386, 81 L. Ed. 586 (1937).

4 Or.—First Nat. Bank of St. Johns v. Multnomah State Bank, 87 Or. 423, 170 P. 534 (1918).

5 U.S.—Shriver v. Woodbine Sav. Bank of Woodbine, Iowa, 285 U.S. 467, 52 S. Ct. 430, 76 L. Ed. 884 (1932).

6 Or.—Skinner v. Davis, 156 Or. 174, 67 P.2d 176 (1937).

7 U.S.—Stockholders of Peoples Banking Co. of Smithsburg, Md. v. Sterling, 300 U.S. 175, 57 S. Ct. 386, 81 L. Ed. 586 (1937).

8 U.S.—Stockholders of Peoples Banking Co. of Smithsburg, Md. v. Sterling, 300 U.S. 175, 57 S. Ct. 386, 81 L. Ed. 586 (1937).

9 Kan.—Woodworth v. Bowles, 61 Kan. 569, 60 P. 331 (1900).

10 U.S.—McKinney v. Kansas Natural Gas Co., 206 F. 772 (D. Kan. 1913), aff'd, 209 F. 300 (C.C.A. 8th Cir. 1913).

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VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

2. Contracts of Private Corporations as Within Constitutional Protection

b. Contracts with Third Persons

§ 606. Preexisting contracts with third persons as within Contract Clause protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

The obligation of preexisting contracts between private corporations and third persons is within the protection of the Contract Clause of the Constitution.

Except in the exercise of the police power and to some extent of the reserved powers, it is beyond the power of the legislature of a state to impair the validity of existing contracts between a corporation and third persons[1] or to take away a defense to which one of the parties to the contract was entitled by its provisions at the time it was made.[2] A statute enacted within the scope of the police powers of the State is valid notwithstanding any effect it may have on previous contracts made by corporations with third persons.[3] While the power of a state under its reserved power to alter or repeal any laws dealing with corporations is wide, it is not so unlimited that the State may destroy or impair the obligations of contracts between corporations and third persons, particularly where the right of one of the parties to enforce the other's liability has become perfected.[4]

Contracts between private corporations and third persons entered into after the effective date of a statute cannot ordinarily be said to be unconstitutionally impaired thereby.[5]

Consolidation of corporations.

Where the legislative intent of a statute authorizing the consolidation of private corporations is to continue rather than to terminate the corporate existence of the consolidating corporations, contracts between one of the consolidating companies and third persons are not unconstitutionally impaired thereby.[6] It has also been held that persons dealing with a corporation are presumed to have knowledge of a statute permitting corporations of its class to consolidate insofar as it provides a scheme for the transfer of the properties, rights, and obligations to the consolidated corporation, and the contracts of such persons are not impaired where such statute permits their strict enforcement.[7]

Conversion.

A statutory provision authorizing the conversion of a not-for-profit health insurer to a for-profit corporation did not change the insurer's certificate of incorporation in violation of the Contract Clause. The not-for-profit health insurer's certificate of incorporation was not a contract between the insurer and the public in determining whether the legislation authorizing insurer's conversion to a for-profit corporation violated the Contract Clause.[8]

Subrogation as impairment.

A statute permitting a stockholder, who has paid its proportionate share of the debts of a solvent corporation, to be subrogated to a creditor's claim against the corporation does not impair the obligation of the contract between the creditors and the corporation[9] or impair the contracts between the corporation and its stockholders or between the stockholders inter se.[10]

Footnotes

1 U.S.—Texoma Natural Gas Co. v. Railroad Commission of Tex., 59 F.2d 750 (W.D. Tex. 1932).
Kan.—Farmers' Co-op. Grain & Supply Co. v. Chicago, R. I. & P. Ry. Co., 139 Kan. 677, 33 P.2d 170 (1934).
Mass.—Delaware & Hudson Co. v. Boston R. R. Holding Co., 323 Mass. 282, 81 N.E.2d 553 (1948).

2 U.S.—Knights Templars' & Masons' Life Indem. Co. v. Jarman, 104 F. 638 (C.C.A. 8th Cir. 1900), aff'd, 187 U.S. 197, 23 S. Ct. 108, 47 L. Ed. 139 (1902).

3 U.S.—Union Dry Goods Co. v. Georgia Public Service Corp., 248 U.S. 372, 39 S. Ct. 117, 63 L. Ed. 309, 9 A.L.R. 1420 (1919); Reed v. Knollwood Park Cemetery, 441 F. Supp. 1144 (E.D. N.Y. 1977).

4 U.S.—Coombes v. Getz, 285 U.S. 434, 52 S. Ct. 435, 76 L. Ed. 866 (1932).

5 Kan.—State v. Public Service Commission of Kansas, 135 Kan. 491, 11 P.2d 999 (1932).
N.J.—Glenmore Distilleries Co. of New York v. Fast Trucking, 14 N.J. Misc. 266, 184 A. 198 (Cir. Ct. 1936).

6 Minn.—First Minneapolis Trust Co. v. Lancaster Corp., 185 Minn. 121, 240 N.W. 459 (1931).
As to the effect of consolidation statutes on the contractual obligations of shareholders, see § 600.

7 Cal.—Mercantile Trust Co. v. San Joaquin Agr. Corp., 89 Cal. App. 558, 265 P. 583 (3d Dist. 1928).

8 N.Y.—Consumers Union of U.S., Inc. v. State, 5 N.Y.3d 327, 806 N.Y.S.2d 99, 840 N.E.2d 68 (2005).
As to the effect of the Contract Clause on insurance companies, see §§ 616 to 618.

9 U.S.—McCune v. First Nat. Trust & Sav. Bank of Santa Barbara, 109 F.2d 887 (C.C.A. 9th Cir. 1940).
Cal.—Patek v. California Cotton Mills, 4 Cal. App. 2d 12, 40 P.2d 927 (1st Dist. 1935).

10 § 602.

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§ 607. Statutes regulating conduct of business with third persons

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Since private contracts must yield to the public welfare, the fact that proper regulation of corporations by a state under its police power has the effect of impairing corporate contracts will not render such regulation unconstitutional.

The circumstance that contracts of corporations with third persons may be affected by statutes enacted under the police power for the regulation of corporations does not render such statutes void since private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict.[1] Thus, where the State cannot be held as a matter of fact to have surrendered to a public utility, by something tantamount to a contract with it, any portion of this regulatory power,[2] the provision of the Federal Constitution forbidding the impairment of contract obligations does not interpose any obstacle to the exertion by the State of its power to regulate the rates and practices of corporations affecting the public interest.[3]

Nevertheless, contracts between public service corporations and third persons are not to be lightly waived aside by simply invoking the convenient apologetics of the police power as it is necessary that any contract interfered with affect adversely the

welfare of the public.[4] Thus, if state statutes regulating public utilities and impairing the contracts of such corporations are not restricted to properties in fact devoted to public use, they will not be upheld.[5] Furthermore, if a corporation was not a public utility at the time the contract in question was made and the contract was not made in anticipation of the acquisition of such status but was merely a private undertaking, the obligation thereof cannot be impaired by state regulation.[6] However, a contract for service made with a corporation not at the time a public utility, but with the right and intention of becoming such, is subject to a rate modification by the State without any unconstitutional impairment of contract obligations.[7]

Regulation of natural resources.

Since the needs of conservation in respect of natural resources, such as oil or gas, are to be determined by the legislature, the fact that an otherwise proper regulation by the State has the effect of impairing contracts between corporations and other persons does not render them unconstitutional.[8] Thus, the extent of private contract as to the drilling of oil wells being at all times subject to the police power of the State, the exercise by the State of such power is not a proper subject for the invocation of the constitutional prohibition against the impairment of contract obligations.[9] It has been held, however, that a statute requiring a lessee under a gas or oil lease, within a specified time after notice is given the lessee that oil is being produced and transported from a well a certain distance from the border of the leased premises, to drill an offset well or to forfeit the lease, when applied to preexisting leases, impairs the obligation of the contract.[10]

Corporations engaging in professional practice.

A statute prohibiting corporations from engaging in the practice of dentistry does not impair the obligations of contracts in the constitutional sense even where the contracts involved were made before the enactment of such statute as they were necessarily made subject to the regulatory power of the State.[11]

Footnotes

1 U.S.—Union Dry Goods Co. v. Georgia Public Service Corp., 248 U.S. 372, 39 S. Ct. 117, 63 L. Ed. 309, 9 A.L.R. 1420 (1919).
Private contract
An order of a public service commission, ruling that the commission could modify a private contract between a developer and a utility by increasing service availability charges after the developer had completed payment of the contractual amount for an increase in plant capacity necessitated by proposed development, unconstitutionally impairs the contract.
Fla.—H. Miller & Sons, Inc. v. Hawkins, 373 So. 2d 913 (Fla. 1979).

2 Cal.—Limoneira Co. v. Railroad Commission of Cal., 174 Cal. 232, 162 P. 1033 (1917).

3 U.S.—Midland Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109, 57 S. Ct. 345, 81 L. Ed. 540 (1937); Producers' Transp. Co. v. Railroad Commission of State of Cal., 251 U.S. 228, 40 S. Ct. 131, 64 L. Ed. 239 (1920).

4 Kan.—Farmers' Co-op. Grain & Supply Co. v. Chicago, R. I. & P. Ry. Co., 139 Kan. 677, 33 P.2d 170 (1934).
Va.—Chesapeake & O. Ry. Co. v. Williams Slate Co., 143 Va. 722, 129 S.E. 499 (1925).
Private rate contracts
Private rate contracts with public utilities are protected from governmental interference by the constitutional provision that no law impairing obligation of contracts shall be passed.
Idaho—Bunker Hill Co. v. Washington Water Power Co., 98 Idaho 249, 561 P.2d 391 (1977).

5 Cal.—Allen v. Railroad Commission of Cal., 179 Cal. 68, 175 P. 466, 8 A.L.R. 249 (1918).

6 Ark.—Clear Creek Oil & Gas Co. v. Ft. Smith Spelter Co., 148 Ark. 260, 230 S.W. 897 (1921).

7 U.S.—Ft. Smith Spelter Co. v. Clear Creek Oil & Gas Co., 267 U.S. 231, 45 S. Ct. 263, 69 L. Ed. 588 (1925).

8 Cal.—Donlan v. Weaver, 118 Cal. App. 3d 675, 173 Cal. Rptr. 566 (4th Dist. 1981).

Contract not impaired by statute enacted prior to making thereof

W. Va.—Devon Corp. v. Miller, 167 W. Va. 362, 280 S.E.2d 108 (1981).

Regulation of manufacture

A statute prohibiting the use of sweet gas in the manufacture of carbon black is not an unconstitutional impairment of obligation of contract although it prevented the performance of a company's contract with producers to take sweet gas for extraction of gasoline content and the company's contract to deliver residue to another company for the manufacture of carbon black.

U.S.—Henderson Co. v. Thompson, 300 U.S. 258, 57 S. Ct. 447, 81 L. Ed. 632 (1937).

9 Okla.—Patterson v. Stanolind Oil & Gas Co., 1938 OK 138, 182 Okla. 155, 77 P.2d 83 (1938).

10 Ky.—Union Gas & Oil Co. v. Diles, 200 Ky. 188, 254 S.W. 205 (1923).

11 Ill.—Winberry v. Hallihan, 361 Ill. 121, 197 N.E. 552 (1935).

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§ 608. Statutes regulating conduct of business with third persons; financial and fiduciary corporations

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West's Key Number Digest

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Since financial and fiduciary corporations are subject to the regulatory power of the State, incidental impairment of their contracts by such regulation is not unconstitutional.

Banks, building and loan associations, mortgage and guaranty corporations, and the like being quasi-public institutions peculiarly affected with the public interest are so within the sphere of legislative control that an incidental impairment of contracts to which they may be parties is insufficient to render otherwise proper statutory regulations unconstitutional.[1] Thus, proper regulation of banks by the State under its police power does not unconstitutionally impair existing deposit contracts.[2] A statute requiring deposits unclaimed for a certain number of years to be turned over to a public officer as trustee for the owners has been held not to impose an unconstitutional impairment on the deposit contract.[3]

Mortgage and bond rehabilitation acts.

Emergency statutes providing for the administration of mortgage investments of corporations taken over by a certain state department have been held not to unconstitutionally impair the contractual obligations between the corporations and the holders of participating certificates.[4] Likewise, a somewhat similar statute empowering a designated state officer, with the consent of a specified proportion of the holders of bonds or mortgage participation certificates, to require the alteration, amendment, or waiver of any terms of bonds or certificates and making the orders to that effect binding is not unconstitutional as impairing contractual obligations.[5]

Footnotes

1 Cal.—King v. Mortimer, 37 Cal. 2d 430, 233 P.2d 4 (1951).
Ky.—Anderson Nat. Bank v. Reeves, 293 Ky. 735, 170 S.W.2d 350 (1942).
Mass.—Commissioner of Banks v. Chase Securities Corp., 298 Mass. 285, 10 N.E.2d 472 (1937).
N.J.—In re North Jersey Title Ins. Co., 120 N.J. Eq. 148, 184 A. 420 (Ch. 1936), aff'd, 120 N.J. Eq. 608, 187 A. 146 (Ct. Err. & App. 1936).
N.Y.—In re Union Guarantee & Mortg. Co., 157 Misc. 408, 283 N.Y.S. 884 (Sup 1935).
State as depository
Where procedure is appropriate, any right of banks under the Contract Clause is not violated by a law requiring them to pay over to state as depository savings deposits which have long remained unclaimed.
U.S.—Security Sav. Bank v. State of California, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).

2 U.S.—National Safe Deposit Co. v. Stead, 232 U.S. 58, 34 S. Ct. 209, 58 L. Ed. 504 (1914); Clement Nat. Bank v. State of Vt., 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913).

3 U.S.—Provident Institution for Sav. in Town of Boston v. Malone, 221 U.S. 660, 31 S. Ct. 661, 55 L. Ed. 899 (1911).
Pa.—In re Certain Moneys in Possession and Custody of Union Trust Co. of Pittsburgh, Pa., 359 Pa. 363, 59 A.2d 154 (1948).
R.I.—Greenough v. People's Sav. Bank, 38 R.I. 100, 94 A. 706 (1915).
Escheats statutes not invalid as altering depositors' contracts
Ky.—Anderson Nat. Bank v. Reeves, 293 Ky. 735, 170 S.W.2d 350 (1942).
Minn.—State v. Northwestern Nat. Bank of Minneapolis, 219 Minn. 471, 18 N.W.2d 569 (1945).

4 N.Y.—In re Westchester Title & Trust Co., 268 N.Y. 432, 198 N.E. 19 (1935).

5 N.J.—Savings Investment & Trust Co. v. Associated Bankers Title & Mortgage Guaranty Co., 122 N.J. Eq. 95, 192 A. 584 (Ch. 1937).

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§ 609. Statutes regulating conduct of business with third persons; franchise agreements

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Statutes enacted as a reasonable exercise of a state's police power in furtherance of the public welfare may affect franchise agreements without being unconstitutional as impairing the obligations of contracts.

Statutes enacted as a reasonable exercise of a state's police power in furtherance of the public welfare may affect franchise agreements without being unconstitutional as impairing the obligations of contracts.[1] Therefore, there is no violation of the Contract Clause where statutes provide for privity of contract between franchise sellers and customers of dealers,[2] or require good faith in performance of franchise obligations,[3] or make it unlawful for any manufacturer to terminate, cancel, or refuse to renew a franchise without good cause,[4] good faith,[5] or written notice.[6]

On the other hand, other authorities have held that laws affecting existing franchise agreements,[7] by imposing reasonable performance standards[8] or termination requirements,[9] such as good faith[10] or good cause,[11] make substantive changes in the rights and obligations of contracts that are not necessary for the welfare of the public and therefore violate the Contract Clause.

CUMULATIVE SUPPLEMENT

Cases:

Franchisee's vehicle sales in relation to the market were deficient, as an element to determine whether franchisor had good cause to terminate franchise agreement; franchisee sold no vehicles in its area of responsibility during first two years of agreement, fact that only two of the seven vehicles in franchisee's area of responsibility had been sold by franchisee in first four years of agreement indicated that franchisee was not well serving its market as the majority of customers were purchasing franchisor's vehicles elsewhere, and franchisee's market share was low compared to franchisor's regional market share. Mont. Code Ann. § 61-4-201(1). S & P Brake Supply, Inc. v. Daimler Trucks North America, LLC, 2018 MT 25, 411 P.3d 1264 (Mont. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Del.—Phillips Petroleum Co. v. Paradee Oil Co., Inc., 343 A.2d 610 (Del. 1975).

Proscription of misrepresentations

Where negotiations began in January between an ice cream franchisor and a prospective franchisee, a binding contract was concluded on July 6, and a statute proscribing misrepresentations of the chances for success of a proposed or existing franchise became effective on May 24, public policy required the imposition of a duty on the franchisor to disclose misrepresentations made prior to the effective date of the statute, and the imposition of such duty was not a construction thereof impairing a contractual obligation.

Fla.—33 Flavors of Florida, Inc. v. Larsen, 308 So. 2d 591 (Fla. 2d DCA 1975).

Bar to recovery of costs of reimbursement

The Contract Clause was not violated by a Maine statutory amendment prohibiting automobile manufacturers, already statutorily required to reimburse dealers at retail-repair rates for warranty repairs, from "otherwise recover[ing]" their costs of reimbursement, e.g., through state-specific wholesale vehicle surcharges; as to franchises entered into since the State had begun to heavily regulate the manufacturer-dealer relationship, the amendment's bar was a foreseeable addition, precluding a finding of substantial impairment, and as to older franchises, the amendment was part of a comprehensive consumer protection statutory scheme within the State's traditional police power.

U.S.—Alliance of Auto. Mfrs. v. Gwadosky, 430 F.3d 30 (1st Cir. 2005).

Compensation for labor and parts

A provision of the Motor Vehicle Franchise Act that required manufacturers to adequately and fairly compensate dealers for labor and parts, so as to preclude manufacturer from imposing warranty surcharge on dealers, did not violate the contract clauses of the federal and state constitutions; the manufacturer had no contractual right to recover such surcharge pursuant to the dealer agreements; the provision did not bar the manufacturer from recovering its costs for warranty reimbursements it was required to pay; rather, the provision simply limited cost recovery by placing conditions on recovery, and the Act was related to the legitimate government purposes of redressing the disparity in bargaining power between automobile manufacturers and their existing dealers and of protecting the public from the negative impact of harmful franchise practices by automobile manufacturers.

Ill.—Nissan North America, Inc. v. Motor Vehicle Review Bd., 2014 IL App (1st) 123795, 379 Ill. Dec. 599, 7 N.E.3d 25 (App. Ct. 1st Dist. 2014), appeal denied, 380 Ill. Dec. 507, 8 N.E.3d 1049 (Ill. 2014).

Arbitration

A state statute providing an expedited method to determine the fair market value of beer distribution rights did not substantially impair an incumbent beer distributor's distribution agreement with a successor beer manufacturer, by imposing an obligation to arbitrate the value of rights upon termination of an agreement in favor of the successor distributor, and the statute thus did not violate state or federal constitution contract

clauses; the event triggering arbitration was the manufacturer's notice of intent to cancel, not the statute itself; arbitration did not compel the transfer of distribution rights nor did the statute preclude the incumbent distributor from bringing an action for damages arising from the manufacturer's breach or for specific performance; and the cost of arbitration, while not insignificant, was to some degree within the parties' control and was comparable to the cost of litigation of the same issue.

U.S.—Mussetter Distributing, Inc. v. DBI Beverage Inc., 685 F. Supp. 2d 1028 (N.D. Cal. 2010).

2 N.Y.—Totten v. Saionz, 38 A.D.2d 630, 327 N.Y.S.2d 55 (3d Dep't 1971).

3 U.S.—Blenke Bros. Co. v. Ford Motor Co., 203 F. Supp. 670 (N.D. Ind. 1962).

4 Mich.—Anderson's Vehicle Sales, Inc. v. OMC-Lincoln, 93 Mich. App. 404, 287 N.W.2d 247 (1979).

N.C.—Mazda Motors of America, Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793, 24 U.C.C. Rep. Serv. 423 (1978), aff'd in part, rev'd in part on other grounds, 296 N.C. 357, 250 S.E.2d 250 (1979).

5 U.S.—Blenke Bros. Co. v. Ford Motor Co., 203 F. Supp. 670 (N.D. Ind. 1962).

6 Mich.—Anderson's Vehicle Sales, Inc. v. OMC-Lincoln, 93 Mich. App. 404, 287 N.W.2d 247 (1979).

Retroactive application

Retroactive application of sections of the Hawaii Motor Vehicle Industry Licensing Act (HMVILA) prohibiting a manufacturer from canceling or failing to renew a franchise agreement without providing notice and without good cause and good faith, and setting forth procedures that the manufacturer seeking to terminate a franchise agreement must follow, to an exclusive distributorship agreement between the distributor and a motorcycle manufacturer did not violate the Contract Clause; although the parties' agreement was substantially affected because the HMVILA sections deprived the manufacturer of its right to automatically terminate the parties' agreement, the State had a significant and legitimate public interest in regulating the termination and nonrenewal of franchise agreements, in light of the extensive regulatory scheme relating to motor vehicle industry; the parties knew or should have known that their contractual rights were subject to alteration by state law; and the HMVILA sections were reasonably designed to promote the State's public purpose by ensuring that motor vehicles, parts, and dependable service were available within the state.

U.S.—Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

7 Fla.—Department of Motor Vehicles for Use and Benefit of Fifth Ave. Motors, Ltd. v. Mercedes-Benz of North America, Inc., 408 So. 2d 627 (Fla. 2d DCA 1981).

Wis.—Wipperfurth v. U-Haul Co. of Western Wisconsin, Inc., 101 Wis. 2d 586, 304 N.W.2d 767 (1981).

8 Ariz.—Ward v. Chevron U. S. A. Inc., 123 Ariz. 208, 598 P.2d 1027 (Ct. App. Div. 2 1979).

9 Del.—Globe Liquor Co. v. Four Roses Distillers Co., 281 A.2d 19 (Del. 1971).

Wis.—Martino v. McDonald's Corp., 101 Wis. 2d 612, 304 N.W.2d 780 (1981).

Offer to repurchase

A requirement that a petroleum products distributor made a good-faith offer to repurchase certain products from a dealer in the event of termination, cancellation, or failure to renew a franchise agreement was not an insubstantial burden on contract.

Ariz.—Ward v. Chevron U. S. A. Inc., 123 Ariz. 208, 598 P.2d 1027 (Ct. App. Div. 2 1979).

Repurchase of terminated franchise inventory

Amendments to Tennessee statutes governing the repurchase of terminated franchise inventory, which removed the statute's narrow focus on retailers of farm equipment and provided that amendments applied retroactively to existing contracts, violated the Tennessee Constitution's contract clause as applied to a distribution agreement between a manufacturer of non-farm related equipment and its distributor, which was entered into prior to the effective date of the amendments; the retroactive application of a significant change in bargaining power between retailers and suppliers was not a clear-cut advancement of the public interest, the amendments were not strictly procedural or remedial, and applying them to a distribution agreement would defeat the expectations of the parties, especially those of the manufacturer, which bargained for the contract with the reasonable understanding that repurchase statutes would not cover the agreement.

U.S.—Jack Tyler Engineering Co., Inc. v. SPX Corp., 294 Fed. Appx. 176 (6th Cir. 2008).

Granting a franchisee's claim, seeking a declaration that an amendment to a Washington statute applied retroactively to require a franchisor to repurchase its products after a franchisee terminated a franchise agreement, would impair the agreement, in violation of the Contract Clause and the Washington

constitutional provision prohibiting the enactment of any law impairing obligations of contracts, on the ground that the amendment lacked a significant and legitimate public purpose to justify a substantial impairment of the agreement; the amendment did not result from economic emergency; Washington had not regulated motorsports franchises prior to the parties' initial franchise agreement; the impact of the amendment was only to a narrow class of motorsports franchises; the franchisor had actually and reasonably relied on a contractual right, but not an obligation, to repurchase products; and retroactively applying the amendment would work a severe, permanent, and immediate change on the parties' contractual relationship.
U.S.—Cycle Barn, Inc. v. Arctic Cat Sales Inc., 701 F. Supp. 2d 1197 (W.D. Wash. 2010).

10 Ariz.—Ward v. Chevron U. S. A. Inc., 123 Ariz. 208, 598 P.2d 1027 (Ct. App. Div. 2 1979).

11 U.S.—Reliable Tractor, Inc. v. John Deere Const. & Forestry Co., 376 Fed. Appx. 938 (11th Cir. 2010).
Ariz.—Ward v. Chevron U. S. A. Inc., 123 Ariz. 208, 598 P.2d 1027 (Ct. App. Div. 2 1979).
Wis.—Martino v. McDonald's Corp., 101 Wis. 2d 612, 304 N.W.2d 780 (1981).

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§ 610. Obligations of contracts to which foreign corporations are parties

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West's Key Number Digest

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A state, under the guise of regulation, may not impair the contractual obligations of foreign corporations.

The legislature may prescribe the conditions under which a foreign corporation will be permitted to do business within the state or may exclude it altogether without impairing the obligation of contracts between the corporation and third persons or stockholders, within the meaning of the Constitution.[1] However, contracts previously made by a foreign corporation cannot be in any wise affected as to their validity by the exclusion of foreign corporations from the state[2] or by a statute restricting their right to do business therein.[3]

Tax statutes requiring foreign corporations employing nonresidents within the state to withhold the tax on their salaries[4] or to assess and collect a tax on corporate loans to residents[5] have been held not violative of the constitutional provision.

Footnotes

1 U.S.—Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).
As to statutory regulation of foreign insurance companies as impairing contractual rights, see § 618.

2 Mo.—Flinn v. Gillen, 320 Mo. 1047, 10 S.W.2d 923 (1928).

3 U.S.—Bedford v. Eastern Bldg. & Loan Ass'n of Syracuse, N.Y., 181 U.S. 227, 21 S. Ct. 597, 45 L. Ed. 834 (1901).

4 U.S.—Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920).

5 Pa.—Com. ex rel. Baldrige v. Sun Oil Co., 294 Pa. 99, 143 A. 495, 60 A.L.R. 737 (1928).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

2. Contracts of Private Corporations as Within Constitutional Protection

b. Contracts with Third Persons

§ 611. Insolvency laws and regulation of priority of claims

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2761, 2762

Congress, under the bankruptcy provision of the Constitution, may impair the obligation of contracts between insolvent corporations and their creditors, but a state may not do so.

Under the power granted it by the bankruptcy provision of the Constitution of the United States, Congress is competent to enact legislation drawn with the direct intention and effect of impairing the obligations of contracts between insolvent debtors, including private corporations, and their creditors.[1] Thus, as all parties to contracts are considered to be aware of and subject to federal laws relating to bankruptcies, amendments of such laws by Congress by no means necessarily impair the contractual rights of insolvent corporations and their creditors in the constitutional sense.[2] Furthermore, an equitable distribution of a bankrupt's assets or an equitable adjustment of a creditor's claims in respect of such assets, by way of corporate reorganization, may be regulated by a bankruptcy statute which does in fact impair the obligation of the bankrupt's contracts, such impairment not being forbidden.[3]

On the other hand, a state may not enact or enforce any legislation governing bankruptcies which impairs the obligations of contracts between corporations and their creditors,[4] nor may it discharge any debts except those which, within its territory, after the passage of the insolvency act, have been incurred by persons subject to its laws.[5]

Footnotes

1 U.S.—Kuehner v. Irving Trust Co., 299 U.S. 445, 57 S. Ct. 298, 81 L. Ed. 340 (1937); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 55 S. Ct. 854, 79 L. Ed. 1593, 97 A.L.R. 1106 (1935); Continental Illinois Nat. Bank & Trust Co. of Chicago v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

2 U.S.—In re Prima Co., 88 F.2d 785, 116 A.L.R. 766 (C.C.A. 7th Cir. 1937).

3 U.S.—In re Purdy, 16 B.R. 847 (N.D. Ga. 1981).

Fair, reasonable, and equitable distribution

The Fifth Amendment, although forbidding the destruction of a contract, does not prohibit bankruptcy legislation affecting a creditor's remedy for its enforcement against a debtor's assets, or the measure of a creditor's participation therein, if the statutory provisions are consonant with a fair, reasonable, and equitable distribution of assets.

U.S.—Kuehner v. Irving Trust Co., 299 U.S. 445, 57 S. Ct. 298, 81 L. Ed. 340 (1937).

4 U.S.—International Shoe Co. v. Pinkus, 278 U.S. 261, 49 S. Ct. 108, 73 L. Ed. 318 (1929).

5 U.S.—McGill v. Commercial Credit Co., 243 F. 637 (D. Md. 1917).

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§ 612. Insolvency laws and regulation of priority of claims; depositary agreements

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 2761, 2762

The Contract Clause of the Constitution protects depositors or other creditors of insolvent financial institutions, and state legislatures may not impair their contracts although the legislatures may regulate the liquidation or reorganization of such institutions.

Depositary agreements are subject to, and not impaired by, the operation of state insolvency statutes in effect at the time such agreements are made.[1] However, the constitutional prohibition against the impairment of contracts applies to protect depositors or other creditors from the impairment of substantial contractual rights between them and insolvent financial institutions by state legislation.[2]

On the other hand, state statutes which merely provide for the orderly transaction of business and the mitigation of losses suffered by depositors or other creditors of an insolvent bank or similar financial institution are not unconstitutional as impairing

the obligations of contracts of that nature,[3] the reason being that institutions of such character are considered to be affected with a public interest and hence subject to regulation under the police power.[4]

Thus, state statutes authorizing a particular officer or a board to conserve the assets of an insolvent bank or to wind up its affairs under certain conditions,[5] or to freeze the deposits or limit withdrawals when the bank is in an unsafe condition,[6] have been held not unconstitutionally to impair the obligations of the deposit contracts. It has been decided, however, that, if a statute must be construed as authorizing a state officer to succeed as trustee of an insolvent trust company in direct conflict with the terms of the contract on which a party depends for the protection of his or her rights therein, it will unconstitutionally impair the obligations of the contract.[7]

Reorganization.

Depositors or other creditors have no constitutional right under the Federal Constitution to have the affairs of an insolvent financial institution liquidated at the hands of a particular state officer or a particular court or by any other fixed form or method.[8] Thus, otherwise valid statutes providing schemes for the reorganization and reopening of such corporations are generally held not to be unconstitutional as impairing the preexisting contractual obligations of the corporation with those of its depositors or other creditors who do not agree to the reorganization plan.[9] This is particularly true as to creditors whose claims accrued subsequent to the enactment of the reorganization act involved.[10] Moreover, those conditions, authorized by statute, which a proper state officer imposes in connection with the reorganization plan do not impair contractual obligations between an insolvent bank and its depositors although binding on both.[11]

Bank guaranty laws.

The fact that a state bank guaranty statute, which is a police regulation, takes away from a depositor a right to have issued to the depositor an interest-bearing certificate and provides instead for the issuance of a noninterest-bearing certificate does not render it unconstitutional as impairing depositors' contract rights since no contractual right to the former ever existed.[12]

CUMULATIVE SUPPLEMENT

Cases:

In Canada, where no constitutional prohibition exists against the passage of laws impairing the obligation of contracts, parliament may, by statute, compel individual bondholders of a domestic corporation to accept an arrangement or compromise made when the corporation is in financial embarrassment for the benefit of all the bondholders, and accepted by a majority of them. Such statutes are on a footing with bankrupt acts, and cannot be said to deprive any person of his property without due process of law. Canada Southern Ry. Co. v. Gebhard, 109 U.S. 527, 3 S. Ct. 363, 27 L. Ed. 1020 (1883).

[END OF SUPPLEMENT]

Footnotes

1 Iowa—Priest v. Whitney Loan & Trust Co., 219 Iowa 1281, 261 N.W. 374 (1935).
S.D.—Farmers' & Merchants' Bank v. Tomlinson, 55 S.D. 185, 225 N.W. 305 (1929).

2 Mo.—State ex rel. Banister v. Cantley, 330 Mo. 943, 52 S.W.2d 397 (1932).

3 Ill.—Dillon v. Elmore, 361 Ill. 356, 198 N.E. 128 (1935).

Changing method of liquidation

A statute providing for the reorganization of a closed bank, and on its face simply changing the method of liquidation, is not unconstitutional as impairing an obligation of contract, in view of an explicit provision in the statute that the assets of the closed bank were to be devoted without impairment or diversion to the payment of the debts of the closed bank.

U.S.—Doty v. Love, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

4 Iowa—Priest v. Whitney Loan & Trust Co., 219 Iowa 1281, 261 N.W. 374 (1935).

N.J.—In re Mechanics Trust Co., 119 N.J. Eq. 141, 181 A. 423 (Ch. 1935).

Pa.—Statler v. U.S. Savings & Trust Co. of Conemaugh, 326 Pa. 247, 192 A. 250 (1937).

5 Mich.—Robinson v. People's Bank of Leslie, 266 Mich. 178, 253 N.W. 259, 92 A.L.R. 1251 (1934).

S.C.—Zimmerman v. Central Union Bank, 194 S.C. 518, 8 S.E.2d 359 (1940).

6 Fla.—McConville v. Ft. Pierce Bank & Trust Co., 101 Fla. 727, 135 So. 392 (1931).

Pa.—Pestcoe v. Sixth Nat. Bank of Philadelphia, 112 Pa. Super. 373, 171 A. 302 (1934).

7 Mo.—State ex rel. Banister v. Cantley, 330 Mo. 943, 52 S.W.2d 397 (1932).

8 U.S.—Doty v. Love, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

Minn.—Timmer v. Hardwick State Bank, 194 Minn. 586, 261 N.W. 456 (1935).

9 U.S.—Doty v. Love, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

10 **Law a part of contract**

Law relating to the reorganization of insolvent banks became part of a contract of residents becoming creditors after the law took effect.

S.D.—Farmers' & Merchants' Bank v. Tomlinson, 55 S.D. 185, 225 N.W. 305 (1929).

11 Minn.—Baltrusch v. Citizens State Bank, 211 Minn. 77, 300 N.W. 201 (1941).

W. Va.—Eskew v. Buckhannon Bank, 115 W. Va. 579, 177 S.E. 433 (1934).

12 Miss.—Love v. Mangum, 160 Miss. 590, 135 So. 223 (1931).

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§ 613. Priority of creditors

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2761, 2762

A state may regulate priorities as between creditors of a private corporation, but in doing so, it cannot give preferences which will impair the obligation of existing contracts.

A state is competent to regulate priorities as between creditors of a private corporation where the obligations involved have been contracted after the state's regulatory statute has become effective.[1] However, the State, in regulating the priority of claims against solvent and insolvent corporations, cannot give preferences which will impair the obligation of existing contracts.[2] Nevertheless, a statute affecting priorities, even though plainly retroactive, is not necessarily unconstitutional,[3] and if the law gives merely an apparent but not actual priority and furnishes a more effective means of reaching the corporate assets, it is not within the constitutional prohibition.[4]

Where a statute merely provides for a new division of any fund which may in the future arise through the sequestration of the debtor's assets in bankruptcy or any other insolvency proceeding, the impairment clause does not control since the contract between a bankrupt corporation and its creditors remains what it was before.[5]

Depositors.

A statute permitting the subordination of some of the depositors of an insolvent bank to allow a full withdrawal by others has been held to be void as an unconstitutional impairment of the contracts of depositors not favored.[6] Furthermore, the elimination by amendment of a state constitutional provision giving holders of bank notes and depositors who had not stipulated for interest a preference in payment will, if construed retroactively, violate the Federal Constitution.[7]

On the other hand, a statute authorizing a designated state officer to permit a trust company, unable to pay all of its depositors, permission to extend the payment of time deposits and to postpone the payment of demand deposits does not illegally impair the contracts of the latter.[8] A statute allowing a preference to the beneficiaries of a trust on the insolvency of a bank, when construed as applying to a claim for a preference for trust funds deposited and commingled prior to its effective date, even though the bank was insolvent at the time, is not unconstitutional as impairing the contract rights of preexistent creditors since the latter have no right to have trust funds put into the general assets.[9]

It appears to be the rule in some jurisdictions that, if a depositor leaves money in a bank after the effective date of an act respecting preferences in case of insolvency, the contract with the bank will not be considered to be unconstitutionally impaired by the enforcement of such statute on the subsequent insolvency of the bank.[10]

Footnotes

1 Tex.—State v. Nix, 134 Tex. 476, 133 S.W.2d 963 (1939).
Wis.—In re Banski's Guardianship, 226 Wis. 361, 276 N.W. 626 (1937).

2 U.S.—Minnesota Mut. Life Ins. Co. v. U.S., 47 F.2d 942 (N.D. Tex. 1931).
Tex.—Males v. Wimberly, 107 S.W.2d 466 (Tex. Civ. App. Dallas 1937).

3 U.S.—In re Inland Dredging Corporation, 61 F.2d 765, 88 A.L.R. 254 (C.C.A. 2d Cir. 1932).

4 Ind.—Garvin v. Chadwick Realty Corp., 212 Ind. 499, 9 N.E.2d 268 (1937).

5 U.S.—In re Inland Dredging Corporation, 61 F.2d 765, 88 A.L.R. 254 (C.C.A. 2d Cir. 1932).

6 Md.—Ghingher v. Pearson, 165 Md. 273, 168 A. 105 (1933).

7 Ala.—Harris v. Walker, 199 Ala. 51, 74 So. 40 (1917).

8 Pa.—Statler v. U.S. Savings & Trust Co. of Conemaugh, 326 Pa. 247, 192 A. 250 (1937).

9 Ind.—Garvin v. Chadwick Realty Corp., 212 Ind. 499, 9 N.E.2d 268 (1937).

10 Ind.—Garvin v. Chadwick Realty Corp., 212 Ind. 499, 9 N.E.2d 268 (1937).
S.C.—Witt v. People's State Bank of South Carolina, 166 S.C. 1, 164 S.E. 306, 83 A.L.R. 1068 (1932).

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§ 614. Statutes terminating corporate existence

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2757

Statutes dissolving a corporation or repealing its charter do not necessarily impair the obligations of contracts which the corporation has entered into.

The enactment of a statute dissolving a corporation or repealing its charter does not of itself impair the obligations of any contract which the corporation has entered into.[1] The repeal of the charter, for example, is not unconstitutional merely because there are bonds of the corporation outstanding nor because the franchises or other property of the corporation have been mortgaged to secure such bonds.[2] Statutory provisions are void, however, when they attempt to divert the assets of the corporation from existing creditors or to alter the rights of such creditors among themselves.[3] It has been held that the contract rights of persons indebted to a de facto corporation defectively organized or organized under an invalid law are not impaired by a statute making the corporation a corporation de jure.[4]

Footnotes

1 N.J.—Petition of Collins-Doan Co., 3 N.J. 382, 70 A.2d 159, 13 A.L.R.2d 1250 (1949).
Wash.—Hawley v. Bonanza Queen Min. Co., 61 Wash. 90, 111 P. 1073 (1910).
Exercise of court's jurisdiction
In a proceeding by a corporation for judicial supervision of winding up of its affairs and its dissolution, the exercise of the court's jurisdiction in winding up and dissolution of the corporation did not violate any vested contract right of shareholders notwithstanding a provision in the articles of incorporation that all or substantially all of the corporate property could not be disposed of unless approved by a vote of all shareholders or by their written consent, which was not given by four shareholders.
Cal.—In re Mayellen Apartments, 134 Cal. App. 2d 298, 285 P.2d 943 (2d Dist. 1955).

2 Mich.—People ex rel. Ellis v. Calder, 153 Mich. 724, 117 N.W. 314 (1908), aff'd, 218 U.S. 591, 31 S. Ct. 122, 54 L. Ed. 1163 (1910).

3 Wash.—Hawley v. Bonanza Queen Min. Co., 61 Wash. 90, 111 P. 1073 (1910).

4 U.S.—Deitch v. Staub, 115 F. 309 (C.C.A. 6th Cir. 1902).

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§ 615. Statutes affecting remedies for the enforcement of contracts between corporations and third persons

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2730 to 2732, 2734 to 2737, 2740, 2745, 2752, 2757, 2760, 2761

Statutes affecting only remedies for the enforcement of contracts between corporations and third persons do not unconstitutionally impair such contracts.

Statutes which do not impair the substantive rights of either the corporation or third persons under antecedent contracts but merely affect the remedy for the enforcement of such contracts are valid.[1]

On the other hand, a statute which, while purporting to affect only the remedy, in fact destroys or impairs the obligations of preexisting contracts is unconstitutional.[2]

Footnotes

1 U.S.—Hackler v. Farm & Home Savings & Loan Ass'n, 6 F. Supp. 610 (W.D. Mo. 1934).
Ill.—Town of Cheney's Grove v. VanScoyoc, 357 Ill. 52, 191 N.E. 289 (1934).
La.—Hibernia Mortg. Co. v. Greco, 191 La. 658, 186 So. 60 (1938).

2 U.S.—Garris v. Hanover Ins. Co., 630 F.2d 1001 (4th Cir. 1980).

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c. Insurance Companies

§ 616. Insurance contracts as within federal or state contract clauses, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2752, 2758, 2762, 2770

Insurance contracts are within the protection of the Contract Clause of the Constitution.

A statute regulating insurance contracts does not unconstitutionally impair the obligations of an insurance contract entered into after the effective date of such statute,[1] and a statute which is inapplicable to existing contracts also does not violate the Contract Clause.[2] Likewise, a statute that does not speak to the subject of an insurance policy or alter or change specific terms of the contract does not impair the obligation of contracts,[3] nor does a statute concerning the reorganization of mutual insurance companies, which does not diminish the contractual rights of the plaintiff shareholders nor alter the terms of their contractual relationship with the company.[4] On the other hand, a statute which attempts to alter or impair the substantial rights of either party to a contract of insurance is void.[5]

An order of an insurance commissioner, made in the performance of a quasi-legislative function, which has legislative force and effect, cannot abrogate the terms of an existing contract,[6] and the constitutional prohibition implicitly requires the availability of

judicial review of such an order.[7] However, the contractual rights of an insured are not impaired where the statutorily mandated change does not deprive the insured of an existing right but results in a benefit to the insured,[8] and there is no impairment of the obligation of contract where the purpose and effect of a statutory provision is to eliminate possible windfalls resulting from the double recovery of damages.[9] Further, when it is established that the parties anticipated a possible legislative adjustment to their agreement, such as by an elasticity clause which conformed the policies to the prevailing statutory law, such a change in the law does not unconstitutionally impair the insurance contract.[10] Absent clear statutory language indicating that the legislature intended to bind itself contractually, a statute, such as one empowering a commissioner of insurance to fix rates insurers may charge their policyholders and establish many of the specific terms of the insurance contracts, creates no private contractual or vested rights protected by state and federal contract clauses.[11]

An important limitation to the general rules stated above arises from the fact that insurance companies are quasi-public corporations peculiarly vested with a public interest and hence are so within the sphere of legislative control that an incidental impairment of the obligations of insurance contracts occasioned by the exercise of the police power is insufficient to render such impairment unconstitutional.[12] Thus, it is within the power of the legislature to enact statutes which indirectly affect the value of the rights to which policyholders are entitled under their contracts[13] or which alter the method of fixing insurance rates.[14] It has been observed that, for purposes of determining whether a statute violates the Contract Clause, insurance carriers are engaged in a heavily regulated industry and thus can have no reasonable expectation that the law will remain unchanged.[15] Accordingly, in light of highly regulated nature of insurance industry, legislative change does not necessarily operate as a substantial impairment of contractual rights.[16]

The rehabilitation of insurance companies pursuant to state insolvency statutes does not impair the obligation of contracts.[17] Furthermore, the retroactive application of new priority scheme to an existing liquidation does not usually impair a purported vested right where the priority scheme in force at any given time is subject to change at the discretion of the legislature and the legislature was acting in the public interest. Such a claimant generally has no more than a hope or an expectation of a future dividend distribution, not a vested, absolute right to distribution.[18]

Divorce revocation statute.

A former wife who is not a party to a husband's life insurance contract has no contract rights as a policy beneficiary that are substantially impaired by the retroactive application of a statute revoking beneficiary designations of spouses upon divorce.[19] The retroactive application of a divorce revocation statute to revoke a former wife's expectancy interest as the beneficiary of her former husband's life insurance policy does not violate the state and federal impairments of the Contract Clause as the former wife has no vested interest and cannot show a substantial impairment of a contractual relationship with respect to the insurance policy.[20] However, the severe contractual impairment from the retroactive application of a statute making the designation of a spouse as a beneficiary on a life insurance policy ineffective after a divorce calls for careful scrutiny of the nature and purpose of the legislation involved.[21] Thus, it has been held that the retroactive application of a state statute that operated to disqualify an ex-spouse as a beneficiary under a life insurance policy violates the Contract Clause, and thus, the statute could not be applied to divest an ex-spouse of policy proceeds.[22]

Footnotes

1 U.S.—Watson v. Employers Liability Assur. Corp., 348 U.S. 66, 75 S. Ct. 166, 99 L. Ed. 74 (1954).
Ga.—Bankers Ins. Co. v. Taylor, 267 Ga. 134, 475 S.E.2d 619 (1996).
N.J.—Adams v. Keystone Ins. Co., 264 N.J. Super. 367, 624 A.2d 1008 (App. Div. 1993).

Contracts written after effective date of regulation

Wash.—Federated American Ins. Co. v. Marquardt, 108 Wash. 2d 651, 741 P.2d 18 (1987).

2 Ky.—Kenton & Campbell Benev. Burial Ass'n v. Quinn, 244 Ky. 260, 50 S.W.2d 554 (1932).

Not retroactive

A statute specifying allowable reasons for the cancellation of an insurance policy prior to expiration does not violate the Contract Clause since it does not apply retroactively.

S.C.—American Nat. Fire Ins. Co. v. Smith Grading and Paving, Inc., 317 S.C. 445, 454 S.E.2d 897 (1995).

3 **Statute imposing on insurer duty of good faith and fair dealing**

La.—Manuel v. Louisiana Sheriff's Risk Management Fund, 664 So. 2d 81 (La. 1995).

4 U.S.—Cranley v. National Life Ins. Co. of Vermont, 144 F. Supp. 2d 291 (D. Vt. 2001), judgment aff'd, 318 F.3d 105 (2d Cir. 2003).

Conversion of mutual insurance company to stock insurance company

The conversion of a mutual insurance company to a stock insurance company pursuant to a statute allowing such conversion upon the approval of two-thirds of the votes cast by eligible policy holders did not impair any contractual rights of the company members; from inception, the company charter was subject to statutory provisions for amending charters, and the statutory voting mechanism was validly enacted by the New York legislature.

U.S.—Tancredi v. Metropolitan Life Ins. Co., 149 F. Supp. 2d 80 (S.D. N.Y. 2001), judgment aff'd, 316 F.3d 308 (2d Cir. 2003).

5 U.S.—Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).

La.—Billingsley v. Mitchell, 676 So. 2d 208 (La. Ct. App. 1st Cir. 1996), writ denied, 681 So. 2d 1265 (La. 1996).

Impairment found

U.S.—In re Workers Compensation Refund, 842 F. Supp. 1211 (D. Minn. 1994), judgment aff'd, 46 F.3d 813 (8th Cir. 1995).

Fla.—Allstate Ins. Co. v. Garrett, 550 So. 2d 22 (Fla. 2d DCA 1989).

N.J.—Donato v. Market Transition Facility of New Jersey, 299 N.J. Super. 37, 690 A.2d 631 (App. Div. 1997).

Retroactive applications as impairment

Ill.—Prudential Property and Cas. Ins. Co. v. Scott, 161 Ill. App. 3d 372, 112 Ill. Dec. 932, 514 N.E.2d 595 (4th Dist. 1987).

Tenn.—Kee v. Shelter Ins., 852 S.W.2d 226 (Tenn. 1993).

Changes between insurance policy renewals

Changes in statutes that occur between insurance policy renewals cannot be incorporated into an insurance policy without unconstitutionally impairing the obligation of the parties to the insurance contract.

Fla.—Esancy v. Hodges, 727 So. 2d 308 (Fla. 2d DCA 1999).

Meaning of terms

Under Pennsylvania law, where terms commonly used in insurance policies have acquired settled meanings, a new meaning cannot be ascribed to any such term absent express language in the policy indicating such a change was intended; to do so would run afoul of the constitutional prohibition against impairment of contracts.

U.S.—McMillen Engineering, Inc. v. Travelers Indem. Co., 744 F. Supp. 2d 416 (W.D. Pa. 2010).

A statute defining "occurrence" under a commercial general liability insurance policy in a construction context to include "property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself," and which provided that the definition applied to all policies previously issued or currently in effect, amounted to retroactive application of the law in violation of the contract clauses under the state and federal constitutions, in that it substantially impaired preexisting contractual relationships between an insurer and an insured by mandating that all commercial general liability policies include the new statutory definition of "occurrence," and the retroactivity provision was not reasonable and necessary to address a pressing emergency.

S.C.—Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (2012).

6 Iowa—Davenport Osteopathic Hospital Ass'n of Davenport, Iowa v. Hospital Service, Inc., of Iowa, 261 Iowa 247, 154 N.W.2d 153 (1967).

Insurance industry subject to the control of the state

The insurance industry is affforded with a public interest and is subject to the control of the State in the exercise of its police powers through the Insurance Code.

Ill.—Lincoln Towers Ins. Agency, Inc. v. Boozell, 291 Ill. App. 3d 965, 225 Ill. Dec. 909, 684 N.E.2d 900 (1st Dist. 1997).

As to the impairment of contracts by orders of boards and commissions, generally, see § 513.

7 **Insurance cancellation order**

Cal.—Associated Cal. Loggers, Inc. v. Kinder, 79 Cal. App. 3d 34, 144 Cal. Rptr. 786 (2d Dist. 1978).

8 Cal.—Hinckley v. Bechtel Corp., 41 Cal. App. 3d 206, 116 Cal. Rptr. 33 (1st Dist. 1974).

No impairment found generally

Mass.—In re Liquidation of American Mut. Liability Ins. Co., 434 Mass. 272, 747 N.E.2d 1215 (2001).

Minn.—State ex rel. Hatch v. Employers Ins. of Wausau, 644 N.W.2d 820 (Minn. Ct. App. 2002).

N.J.—New Jersey Ass'n of Health Plans v. Farmer, 342 N.J. Super. 536, 777 A.2d 385 (Ch. Div. 2000).

9 Neb.—Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

10 Wis.—Roehl v. American Family Mut. Ins. Co., 222 Wis. 2d 136, 585 N.W.2d 893 (Ct. App. 1998).

Similar provision in disability insurance policy

Under New York law, a provision of a disability insurance policy requiring conformity with state statutes if any provision of the policy was in conflict incorporated state law requirements as to the substance of an incontestability clause, and thus, invalidating the clause based on a violation of the statute prescribing its terms would not violate the Contract Clause prohibiting law impairing an obligation of contracts.

U.S.—Burke v. First UNUM Life Ins. Co., 975 F. Supp. 310 (S.D. N.Y. 1997).

11 N.J.—New Jersey Ass'n of Health Plans v. Farmer, 342 N.J. Super. 536, 777 A.2d 385 (Ch. Div. 2000).

12 N.J.—In re North Jersey Title Ins. Co., 120 N.J. Eq. 148, 184 A. 420 (Ch. 1936), aff'd, 120 N.J. Eq. 608, 187 A. 146 (Ct. Err. & App. 1936).

Abandoned property law

Abandoned property law does not impair an obligation of a life insurance contract by transforming conditional obligations into liquidated obligations, in that such policy conditions as a requirement of proof of death are dispensed with in providing for payment of unclaimed insurance funds to the state, even assuming that such provisions make it more difficult to establish complete or partial defenses.

U.S.—Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).

Significant and legitimate public purpose for impairment

A statutory amendment precluding a workers' compensation self-insurer group from conditioning the payment of a dividend on an employer's continued participation in the group did not violate the federal or Michigan contract clause as applied even if the amendment substantially impaired the contracts entered into by a self-insurer group prior to the amendment's effective date; there was a significant and legitimate public purpose for such an impairment of contract, and the means adopted to implement the legislation were reasonably related to the public purpose.

Mich.—Health Care Ass'n Workers Comp. Fund v. Director of the Bureau of Worker's Comp., Department of Consumer and Industry Services, 265 Mich. App. 236, 694 N.W.2d 761 (2005).

Impairment of property insurers' contract rights as result of statutes extending for one year prescriptive periods for filing claims arising from Hurricanes Katrina and Rita did not violate state or federal contract clauses; state law has traditionally regulated insurance as a matter of public policy, the extensions were based upon significant and legitimate public purpose, the State was not providing a benefit to a special interest, and its ownership of insured property damaged by the hurricanes was incidental to the scope of the matter at issue.

La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

13 Ala.—State ex rel. Highsmith v. Brown Service Funeral Co., 236 Ala. 249, 182 So. 18 (1938).

N.Y.—United States Mortgage & Trust Co. v. Ruggles, 224 A.D. 504, 231 N.Y.S. 100 (1st Dep't 1928).

Rehabilitation plan

A plan for rehabilitation of an insolvent insurance company was not an impairment of obligation of contracts because of less favorable terms of new noncancelable policies which were to be substituted for old ones and in the case of life policies by substitution of a new company as contractor where the policyholders were given the option of a liquidation which was as favorable to them as that which would result from a sale and pro rata distribution of assets.

U.S.—Neblett v. Carpenter, 305 U.S. 297, 59 S. Ct. 170, 83 L. Ed. 182 (1938).

14 **Title insurance rates**

A statute enacted under the police power of a state requiring an insurance commissioner to fix title insurance rates is not unconstitutional because it abrogates a rate-fixing contract executed before the effective date of the statute.

Tex.—Daniel v. Tyrrell & Garth Inv. Co., 127 Tex. 213, 93 S.W.2d 372 (1936).

15 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).

S.C.—Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co., 323 S.C. 532, 476 S.E.2d 481 (1996).

16 Conn.—Amica Mut. Ins. Co. v. Woods, 48 Conn. App. 690, 711 A.2d 1208 (1998).

Future formation of contracts in highly regulated industry

A Kentucky health care reform statute which prohibits insurers, after July 15, 1995, from issuing or renewing health benefit plans other than standard plans promulgated by the Health Policy Board caused little or no interference with existing contractual relationships but regulated the future formation of contracts in a highly regulated industry and, therefore, did not violate the Contract Clause; each policy renewal was a novation creating a separate contract, and the insurer's real complaint was a prohibition against making highly profitable contracts insuring intensely unwritten "blocks of business."

U.S.—Golden Rule Ins. Co. v. Stephens, 912 F. Supp. 261 (E.D. Ky. 1995).

17 Ark.—Mendel v. Garner, 283 Ark. 473, 678 S.W.2d 759 (1984).

18 N.Y.—In re Ideal Mutual Ins. Com., 82 A.D.3d 518, 918 N.Y.S.2d 441 (1st Dep't 2011).

19 Ariz.—Matter of Estate of Dobert, 192 Ariz. 248, 963 P.2d 327 (Ct. App. Div. 1 1998).

20 Colo.—In re Estate of Becker, 32 P.3d 557 (Colo. App. 2000), as modified on denial of reh'g, (Mar. 8, 2001) and decision aff'd, 54 P.3d 849 (Colo. 2002).

Exercise of legislative power designed to meet a legitimate public purpose

Wash.—Mearns v. Scharbach, 103 Wash. App. 498, 12 P.3d 1048 (Div. 3 2000).

Contract Clause addresses contracts, not donative transfers

A state statute revoking designations of spouses as beneficiaries upon marital dissolution was constitutional as applied to a former spouse who sought the proceeds from a life insurance policy since the statute did not impair any vested contractual right of spouse; the spouse's purported beneficiary rights would not have vested until the death of the insured, and the Contract Clause addressed contracts, not donative transfers.

U.S.—Lincoln Ben. Life Co. v. Heitz, 468 F. Supp. 2d 1062 (D. Minn. 2007).

Significant and legitimate public purpose

U.S.—Allstate Life Ins. Co. v. Hanson, 200 F. Supp. 2d 1012 (E.D. Wis. 2002).

Merely third-party beneficiaries, not parties to the contract

Colo.—In re Estate of DeWitt, 54 P.3d 849 (Colo. 2002).

21 Pa.—Parsonese v. Midland Nat. Ins. Co., 550 Pa. 423, 706 A.2d 814 (1998).

22 U.S.—MONY Life Ins. Co. v. Ericson, 533 F. Supp. 2d 921 (D. Minn. 2008).

Ohio—In re Estate of Holycross, 112 Ohio St. 3d 203, 2007-Ohio-1, 858 N.E.2d 805 (2007).

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16A C.J.S. Constitutional Law § 617

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PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

2. Contracts of Private Corporations as Within Constitutional Protection

c. Insurance Companies

§ 617. Modification of health insurance policies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2758

Health insurance contracts are within the protection of the Contract Clause of the Constitution.

Generally, statutes modifying health insurance policies by requiring coverage not provided for in the policy, such as maternity coverage,[1] or coverage of the services of psychologists or psychiatrists,[2] or optometrists,[3] violate the Contract Clause. However, this is not so where the insurer has the option to terminate the policy or change the premium rate or coverage[4] or where the statute only requires the insurer to offer the modified coverage to persons renewing or purchasing such policies.[5]

Any attempt by a department of insurance to mandate the application of a statute creating a mandatory, default definition for the term "actual charges" within a supplemental health insurance policies to preexisting policies would exceed the scope of the department's authority and violate the Contract Clause.[6] However, it has also been held that the application of a state statute defining the terms "actual charges" and "actual fee" in specified disease policies to an insured's cancer policy did not violate the Contract Clause. The insured's contractual right was to receive payment for his "actual expenses" of cancer treatments, and

the insurer only altered its interpretation of "actual expenses," which was undefined in the policy, in order to conform to the statute's definition of a synonymous term "actual charges."[7]

Footnotes

1 N.Y.—Health Ins. Ass'n of America v. Harnett, 44 N.Y.2d 302, 405 N.Y.S.2d 634, 376 N.E.2d 1280 (1978).

2 N.Y.—Moore v. Metropolitan Life Ins. Co., 33 N.Y.2d 304, 352 N.Y.S.2d 433, 307 N.E.2d 554 (1973).

3 Wash.—Ketcham v. King County Medical Service Corp., 81 Wash. 2d 565, 502 P.2d 1197 (1972).

4 U.S.—Insurers' Action Council, Inc. v. Markman, 653 F.2d 344 (8th Cir. 1981).
U.S.—Insurers' Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976).
N.Y.—Health Ins. Ass'n of America v. Harnett, 44 N.Y.2d 302, 405 N.Y.S.2d 634, 376 N.E.2d 1280 (1978).
Additional chiropractic coverage
A statute requiring a health insurer to offer coverage for chiropractic services in policies offering coverage for services of doctors of medicine or of osteopathy impaired the insurer's existing contractual relationships, but such impairment was not substantial, as required for it to be unconstitutional, since the insurer could charge a premium for additional coverage required by the statute.
Wis.—Reserve Life Ins. Co. v. La Follette, 108 Wis. 2d 637, 323 N.W.2d 173 (Ct. App. 1982).

5 U.S.—Insurers' Action Council, Inc. v. Markman, 490 F. Supp. 921 (D. Minn. 1980), judgment aff'd, 653 F.2d 344 (8th Cir. 1981).

6 S.C.—Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014).

7 U.S.—Stangl v. Occidental Life Ins. Co. of North Carolina, 804 F. Supp. 2d 1224 (W.D. Okla. 2011).

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2. Contracts of Private Corporations as Within Constitutional Protection

c. Insurance Companies

§ 618. Insurance contracts of foreign corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2758

A state may not extend its laws beyond its own borders so as to destroy or impair the rights of citizens of another state to make an insurance contract not operative within its own jurisdiction.

A state may limit or prohibit insurance companies from making certain insurance contracts within its own territory[1] although it may not extend its laws beyond its own borders so as to destroy or impair the rights of citizens of another state to make an insurance contract not operative within its own jurisdiction.[2] Further, the State may not in an action founded on such a contract enlarge the obligations of the parties to accord with every local statutory policy solely on the ground that one of the parties to the insurance contract is its own citizen.[3]

Statutes which do not deprive persons of any substantial rights but provide the measures with respect to the procedure do not impair the obligation of contracts regardless of where a policy is written or delivered.[4]

Footnotes

1 U.S.—Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).
Mont.—Trammel v. Brotherhood of Locomotive Firemen and Enginemen, 126 Mont. 400, 253 P.2d 329 (1953).
Foreign mail-order insurance
Where contracts an unlicensed foreign mail-order insurance company may have entered into with state residents with guaranteed renewal options by the insured were made in light of prior statutes making insurance issued by unlicensed insurers unenforceable by insurers, it could not be said that a like provision of a subsequently enacted statute pertaining to such companies impaired an obligation of contracts.
Wis.—Ministers Life & Cas. Union v. Haase, 30 Wis. 2d 339, 141 N.W.2d 287 (1966).

2 U.S.—Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).

3 U.S.—Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).

4 U.S.—Buxton v. Midwestern Ins. Co., 102 F. Supp. 500 (W.D. La. 1952).
La.—Churchman v. Ingram, 56 So. 2d 297 (La. Ct. App. 2d Cir. 1951).

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16A C.J.S. Constitutional Law § 619

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VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

3. Civil Remedies and Procedure for Preventing or Remedying Impairment of Contractual Obligations

a. General Considerations

(1) As to Prior Contracts

§ 619. Laws affecting performance of contracts executed prior to the enactment of the laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2760, 2761

Legislation designed to enforce performance of a contract executed prior to the enactment of the legislation does not impair the obligation of contract.

Legislation designed to enforce performance of a contract executed prior to the enactment of the legislation does not impair the obligation of contract.[1]

Footnotes

1 Cal.—Lincoln v. Superior Court of Los Angeles County, 2 Cal. 2d 127, 39 P.2d 405 (1934).
Mich.—Lutz v. Dutmer, 286 Mich. 467, 282 N.W. 431 (1938).

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16A C.J.S. Constitutional Law § 620

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3. Civil Remedies and Procedure for Preventing or Remedying Impairment of Contractual Obligations

a. General Considerations

(1) As to Prior Contracts

§ 620. Laws withdrawing or changing remedies for the enforcement of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2752, 2760, 2761, 2769

The legislature may change or withdraw a remedy for enforcing contracts, provided an adequate remedy is left available, and the substantive, or substantial, rights of the parties, and the value of the contract, are not impaired or lessened.

While, in the absence of express contractual provision,[1] the broad statement has sometimes been made that the legislature may regulate at will remedies for the enforcement of existing contracts,[2] the power of the legislature to regulate such remedies is subject to the constitutional prohibition of laws impairing the obligation of contracts,[3] which prohibition applies to laws impairing the means of enforcement,[4] at least where substantial rights are affected[5] but not where the interests affected are too contingent, remote, and insubstantial to demand protection.[6] A legislature may impose reasonable limitations upon remedies available to the parties to a contract.[7] Laws which act upon remedies alone, although retroactive, will be enforced, provided they do not impair the obligation of contract or disturb absolutely vested rights, and only go to confirm rights already existing,

and in furtherance of a remedy, by curing defects and adding to a means of enforcing existing obligations.[8] Accordingly, the contract clauses of federal and state constitutions do not preclude legislature from passing laws which impose new procedures on the enforcement of substantive rights under a contract.[9] A change of remedy which does not materially lessen the value of a contract is valid under the impairment of Contract Clause.[10]

It is settled that a legislature may modify, limit, or alter the remedy for enforcement of a contract without impairing its obligation.[11] The remedy existing at the date of contract may be altogether abrogated if another equally effective for enforcement of the obligation remains or is substituted for one taken away.[12] If, notwithstanding a modification of law, a party can enforce rights with substantially the same degree of effectiveness as before, the obligation of contract has not been violated.[13]

On the other hand, it is beyond the power of the legislature to deny all remedy or so circumscribe the existing remedy with conditions and restrictions as to seriously impair the value of the right.[14]

Mandamus.

No impairment of the obligation of contracts results from a statute which affects only the method of procedure for invoking the remedy by mandamus.[15]

Extraordinary remedy.

An extraordinary remedy granted by the legislature and springing from no inherent or contract right may be altered or withdrawn without impairing the obligation of the contract.[16]

Footnotes

1 S.D.—Granger v. Luther, 42 S.D. 636, 176 N.W. 1019 (1920).
Tex.—Sharber v. Florence, 131 Tex. 341, 115 S.W.2d 604 (1938).

2 Mich.—McAvoy v. H. B. Sherman Co., 401 Mich. 419, 258 N.W.2d 414 (1977).
Tex.—Pratt v. Story, 530 S.W.2d 325 (Tex. Civ. App. Tyler 1975).
General rule
It is a general rule that alteration or modification of a remedy existing when a contract was entered does not constitute an impairment of an obligation of contract.
Ohio—Wayne Bank v. Bob Schmidt Chevrolet, Inc., 70 Ohio Misc. 7, 23 Ohio Op. 3d 380, 24 Ohio Op. 3d 29, 433 N.E.2d 1294, 33 U.C.C. Rep. Serv. 1106 (C.P. 1981).

3 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).
Wis.—State ex rel. Cannon v. Moran, 107 Wis. 2d 669, 321 N.W.2d 550 (Ct. App. 1982), decision rev'd on other grounds, 111 Wis. 2d 544, 331 N.W.2d 369 (1983).

4 La.—Louisiana Ins. Guaranty Ass'n v. Guglielmo, 276 So. 2d 720 (La. Ct. App. 1st Cir. 1973), writ denied, 279 So. 2d 690 (La. 1973).
As to what constitutes an "obligation," see § 591.

5 Ky.—General Refractories Co. v. Henderson, 313 Ky. 613, 232 S.W.2d 846 (1950).
La.—American Finance Corp. of Coushatta v. Small, 250 So. 2d 768 (La. Ct. App. 2d Cir. 1971).
Ohio—State ex rel. Core v. Green, 160 Ohio St. 175, 51 Ohio Op. 442, 115 N.E.2d 157 (1953).

6 N.Y.—Bartek v. Murphy, 266 A.D.2d 865, 697 N.Y.S.2d 801 (4th Dep't 1999).
Or.—Smothers v. Gresham Transfer, Inc., 149 Or. App. 49, 941 P.2d 1065 (1997), rev'd on other grounds, 332 Or. 83, 23 P.3d 333 (2001).

7 Wis.—Pritchard v. Mead, 155 Wis. 2d 431, 455 N.W.2d 263 (Ct. App. 1990).

8 Ga.—Canton Textile Mills, Inc. v. Lathem, 253 Ga. 102, 317 S.E.2d 189 (1984).

Additional remedy

The retroactive application of a provision of the Planned Community Act, which allowed a homeowners' association to impose reasonable fines or suspend privileges or services provided by the association for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association, did not disturb a vested right, impair a binding contract, or create a new obligation so as to violate the Contract Clause of the Constitution; the provision merely provided an additional remedy for the enforcement of the declaration of covenants, conditions, and restrictions.

N.C.—Reidy v. Whitehart Ass'n, Inc., 185 N.C. App. 76, 648 S.E.2d 265 (2007).

Merely altering remedy

Where a statute merely alters the remedy available to a party, the retroactive application of the statute will not violate the Contract Clause.

N.Y.—Chrysler Motors Corp. v. Schachner, 138 Misc. 2d 501, 525 N.Y.S.2d 127 (Sup 1988), judgment rev'd on other grounds, 166 A.D.2d 683, 561 N.Y.S.2d 595 (2d Dep't 1990).

9 Pa.—Lynn v. Prudential Property and Cas. Ins. Co., 422 Pa. Super. 479, 619 A.2d 779 (1993).

Medical malpractice actions

A statute which required that in medical malpractice actions a patient must file an affidavit stating that, based on consultation with a health professional, there was a "reasonable and meritorious" cause for filing the action did not unconstitutionally impair an obligation of contracts, deprive the patient of a jury trial, or deprive the patient of the right to recover for injuries; the right to maintain a bona fide medical malpractice action was not curtailed by the statute which merely established a reasonable procedure designed to summarily dispose of meritless cases.

Ill.—Bloom v. Guth, 164 Ill. App. 3d 475, 115 Ill. Dec. 468, 517 N.E.2d 1154 (2d Dist. 1987).

10 Minn.—Laue v. Production Credit Ass'n of Blooming Prairie, 390 N.W.2d 823 (Minn. Ct. App. 1986).

11 U.S.—Honeyman v. Jacobs, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939); Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R. 886 (1937).

As to a change in remedy as not impairing vested rights, see § 498.

Substantial value to contractual relationship required

For purposes of the federal constitutional Contract Clause, the contractual relationship of creditor and debtor is not substantially impaired by later legislation compromising or eliminating the creditor's right to enforcement of the contract through the remedy of judgment and levy against specific unsecured property of the debtor unless that right otherwise had substantial value to the contractual relationship at the time of the legislation complained of.

U.S.—In re Johnson, 69 B.R. 988 (Bankr. D. Minn. 1987).

Revised version of Uniform Commercial Code

The retroactive application of a revised version of a Uniform Commercial Code (UCC) provision, allowing a secured party to sell, lease, license, or otherwise dispose of collateral upon default rather than to simply be able to remove the collateral, was not an unconstitutional impairment of a landlord's contractual rights under a consent agreement executed between the landlord and a holder of a security interest in the property despite the landlord's argument that the consent established the limits of the landlord's subordination and the remedies available to the interest holder in the event of default by the tenant; the consent did not include any language by which the interest holder agreed to be limited to certain remedies, and any rights concerning the remedies were not vested since they would not go into effect unless and until the tenant defaulted.

Ariz.—FL Receivables Trust 2002-A v. Arizona Mills, L.L.C., 230 Ariz. 160, 281 P.3d 1028, 77 U.C.C. Rep. Serv. 2d 874 (Ct. App. Div. 1 2012).

12 U.S.—Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R. 886 (1937).

13 Cal.—National Collection Agency, Inc. v. Fabila, 93 Cal. App. 3d Supp. 1, 155 Cal. Rptr. 356 (App. Dep't Super. Ct. 1979).

14 U.S.—Honeyman v. Jacobs, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939); Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R. 886 (1937).

15 N.C.—Sovereign Camp W. O. W. v. Board of Com'rs of Lenoir County, 208 N.C. 433, 181 S.E. 339 (1935).

16 N.Y.—Application of Fleetwood Acres, 186 Misc. 299, 62 N.Y.S.2d 669 (Sup 1945), order aff'd, 270 A.D. 1050, 63 N.Y.S.2d 238 (2d Dep't 1946).

Tex.—Dickson v. Navarro County Levee Imp. Dist. No. 3, 135 Tex. 95, 139 S.W.2d 257 (1940).

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a. General Considerations

(1) As to Prior Contracts

§ 621. Laws withdrawing or changing remedies; remedies expressly contracted for by the parties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2752, 2760, 2761

It is commonly held that a remedy for which the parties expressly contract cannot be changed or abrogated, particularly where it is not given by law.

It has been said that even a remedy expressly contracted for may be impaired or abolished without impairing the obligation of the contract if a substantial remedy is left.[1] While this may be true as to a remedy provided for by law,[2] it has been stated without reference to this limitation that a remedy expressly contracted for cannot lawfully be changed or abrogated,[3] at least where it is specific and exclusive,[4] or more efficacious than the procedure usually open to creditors,[5] or where the remedy left is totally inadequate in comparison therewith.[6]

A stipulation in the contract for a particular remedy not given by law constitutes a material term of the contract, the obligation of which is within the constitutional protection against impairment of the obligation of contracts,[7] although a law restricting the exercise of a contractual remedy so as to render it consistent with equitable procedure is valid.[8]

Laws withdrawing or changing remedies; mandatory arbitration.

A ban on mandatory arbitration clauses may not apply retroactively. Conversely, a nonwaiver provision which prohibited parties to an arbitration agreement from waiving the right to seek judicial review of arbitration award may apply retroactively. For example, the retroactive application of the Dodd-Frank Act provision that banned mandatory arbitration clauses in residential home loans to the arbitration agreement at issue in the underlying action by mortgagors against a loan servicer for violations of the Consumer Credit and Protection Act would have improperly impaired the parties' fundamental right to contract, and thus, the provision did not operate retroactively to nullify arbitration agreement.[9]

The nonwaiver provision of the Uniform Arbitration Act, which applied retroactively and prohibited parties to an arbitration agreement from waiving the right to seek judicial review of an arbitration award, was reasonably necessary to accomplish a legitimate public purpose and, thus, did not unconstitutionally impair the parties' preexisting contractual obligations under a commercial lease containing a clause in which each party agreed to waive the right to seek judicial review of any arbitration award. There was a general public policy favoring arbitration, and promoting arbitration was therefore a legitimate legislative objective, which was the objective of this legislation.[10]

Footnotes

1 La.—Monteleone v. Seaboard Fire & Marine Ins. Co., 126 La. 807, 52 So. 1032 (1910).
N.Y.—Otselic Val. Nat. Bank of South Otselic v. Dapson, 170 Misc. 514, 10 N.Y.S.2d 588 (Sup 1939).
N.D.—Scott v. District Court of Fifth Judicial Dist., 15 N.D. 259, 107 N.W. 61 (1906).

2 **Foreclosure right**
The right of foreclosure is statutory and not contractual, and a retrospective law requiring the recording of an affidavit to validate a foreclosure does not impair obligation of a prior mortgage authorizing "foreclosure by any of methods now provided by law."
Me.—Barton v. Conley, 119 Me. 581, 112 A. 670 (1921), aff'd, 260 U.S. 677, 43 S. Ct. 238, 67 L. Ed. 456 (1923).

3 Pa.—Blank & Gottshall Co. v. First Nat. Bank of Sunbury, 18 Northumb. L.J 95 (Pa. C.P. 1946), aff'd, 355 Pa. 502, 50 A.2d 218 (1947).
Tex.—Beaumont Petroleum Syndicate v. Broussard, 64 S.W.2d 993 (Tex. Civ. App. Beaumont 1933).
Notice not expressly contracted for
Tex.—Pratt v. Story, 530 S.W.2d 325 (Tex. Civ. App. Tyler 1975).

4 Cal.—Lincoln v. Superior Court of Los Angeles County, 2 Cal. 2d 127, 39 P.2d 405 (1934).

5 **Power of attorney**
Power of attorney to confess judgment, incorporated in a note, could not be impaired by subsequent legislation.
Tenn.—Hermitage Loan Co. v. Daykin, 165 Tenn. 503, 56 S.W.2d 164 (1933).

6 Md.—U.S. Mortg. Co. v. Matthews, 167 Md. 383, 173 A. 903 (1934), rev'd on other grounds, 293 U.S. 232, 55 S. Ct. 168, 79 L. Ed. 299 (1934).

7 Ga.—Atlantic Loan Co. v. Peterson, 181 Ga. 266, 182 S.E. 15 (1935).
Tex.—Sharber v. Florence, 131 Tex. 341, 115 S.W.2d 604 (1938).

8 **Enforcement of mortgage**
A statute authorizing a mortgagor, in a suit for a deficiency judgment by a mortgagee purchasing the property under a power of sale in the mortgage, to defeat or offset any deficiency judgment by showing that the

property sold was worth the amount of the debt, or that the bid was substantially less than its true value, is not unconstitutional as impairing obligation of contract.

U.S.—Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R. 886 (1937).

As to statutes affecting the contractual right of mortgage foreclosure, see § 584.

9 W. Va.—State ex rel. Ocwen Loan Servicing, LLC v. Webster, 232 W. Va. 341, 752 S.E.2d 372 (2013).

10 Wash.—Optimer Intern., Inc. v. RP Bellevue, LLC, 151 Wash. App. 954, 214 P.3d 954 (Div. 1 2009), judgment aff'd, 170 Wash. 2d 768, 246 P.3d 785 (2011).

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a. General Considerations

(1) As to Prior Contracts

§ 622. Cumulative remedies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2745, 2752, 2760, 2761

A statute providing an additional remedy, or enlarging or improving an existing remedy for enforcing a contract, does not impair the obligation thereof.

Statutes directed to the enforcement of contracts,[1] or merely providing an additional remedy, or enlarging or making more efficient an existing remedy for their enforcement,[2] do not impair the obligation of the contracts. In like manner, an act providing a remedy for the enforcement of an agreement which was theretofore unenforceable is valid.[3]

However, it has been held that a statute advancing the priority of a claim against a decedent's estate impairs the obligation of the debtor.[4]

Footnotes

1 U.S.—Funkhouser v. J.B. Preston Co., 290 U.S. 163, 54 S. Ct. 134, 78 L. Ed. 243 (1933).

2 Colo.—B. K. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).
Fla.—State ex rel. Van Ingen v. Panama City, 126 Fla. 776, 171 So. 760 (1937).
N.C.—Byrd v. Johnson, 220 N.C. 184, 16 S.E.2d 843 (1941).
As to statutes creating or enlarging remedies as not impairing vested rights, see § 498.
Interest
A statute requiring the allowance of interest on unliquidated or liquidated damages for breach of contract concerns a remedy and does not disturb obligations of a contract.
U.S.—Funkhouser v. J.B. Preston Co., 290 U.S. 163, 54 S. Ct. 134, 78 L. Ed. 243 (1933).

3 N.C.—Byrd v. Johnson, 220 N.C. 184, 16 S.E.2d 843 (1941).

4 Tex.—Laubhan v. Peoria Life Ins. Co., 129 Tex. 225, 102 S.W.2d 399 (Comm'n App. 1937).

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a. General Considerations

(2) Rights, Remedies, Procedural Matters, and Defenses

§ 623. Laws suspending rights of action or curtailing remedies; constitutional protection of contractual obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2745, 2760, 2765

Statutes suspending rights of action and remedies for a reasonable and definite time generally do not impair the obligation of prior contracts although they are void as to prior contracts where the period of suspension prescribed is indefinite or unreasonable, particularly where no public emergency is claimed to exist.

The right of a state to enact moratorium laws, thereby suspending or deferring legal remedies, is said to have been fully settled at the time of the Civil War, and during the period of the First World War, legislation of this type was again enacted.[1] Such moratorium statutes, suspending the rights of creditors for a definite and reasonable time, are not unconstitutional,[2] even if they suspend the right of action,[3] at least if a substantially equivalent, or equally adequate, remedy is substituted.[4]

However, such statutes are void as to contracts made before their passage where the period of suspension prescribed is indefinite[5] or unreasonable,[6] particularly where no public emergency is claimed to exist.[7] The fact that a statute abolishing a particular remedy is permanent in character does not necessarily render it invalid since the emergency requiring the enactment need not be temporary.[8]

Footnotes

1 S.D.—Granger v. Luther, 42 S.D. 636, 176 N.W. 1019 (1920).

2 N.Y.—East New York Savings Bank v. Hahn, 182 Misc. 863, 51 N.Y.S.2d 496 (Sup 1944), aff'd, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).
S.D.—Petition of Oleson, 68 S.D. 435, 3 N.W.2d 880 (1942).
Wis.—Onsrud v. Kenyon, 238 Wis. 496, 300 N.W. 359 (1941).
As to suspending the enforcement of judgments, see § 643.

3 U.S.—Veix v. Sixth Ward Building & Loan Ass'n of Newark, 310 U.S. 32, 60 S. Ct. 792, 84 L. Ed. 1061 (1940).

4 Ala.—Rhodes v. Marengo County Bank, 205 Ala. 667, 88 So. 850 (1921).
Neb.—In re Davis, 103 Neb. 703, 173 N.W. 695 (1919).

5 U.S.—Daniels v. Tearney, 102 U.S. 415, 26 L. Ed. 187, 1880 WL 18792 (1880).

6 Wash.—Strand v. Griffith, 63 Wash. 334, 115 P. 512 (1911).

7 N.Y.—Sliosberg v. New York Life Ins. Co., 244 N.Y. 482, 155 N.E. 749 (1927).
Va.—Citizens Mut. Bldg. Ass'n v. Bohannon, 167 Va. 416, 189 S.E. 460 (1937).

8 U.S.—Veix v. Sixth Ward Building & Loan Ass'n of Newark, 310 U.S. 32, 60 S. Ct. 792, 84 L. Ed. 1061 (1940).

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a. General Considerations

(2) Rights, Remedies, Procedural Matters, and Defenses

§ 624. Constitutional protection of contractual obligations; mortgage moratorium laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2745, 2760, 2765

Reasonable emergency mortgage moratorium laws have been held valid.

So-called "mortgage moratorium laws," enacted as emergency legislation for the relief of mortgagors during the existence of the emergency, have frequently been sustained, as not violating the constitutional prohibition against laws impairing the obligation of contracts, on the ground that such laws are a necessary[1] or reasonable[2] exercise of the states' police power or that they affect merely the remedy and not any substantive contract right.[3] In order not to contravene the constitutional provision, the relief afforded may only be of a character appropriate to the existing emergency and may be granted only on reasonable conditions.[4]

Thus, the courts have affirmed the validity of laws authorizing the postponement of foreclosure sales on certain conditions safeguarding the rights of mortgagees,[5] laws extending the time for redemption following such sales[6] or authorizing the court to grant such extension on certain conditions or limitations,[7] laws suspending foreclosures solely for nonpayment of principal

and suits to enforce bonds secured by mortgages,[8] permitting a continuance of foreclosure suits on motion of the mortgagor,[9] or giving the defendant a longer time to file an answer,[10] laws limiting or suspending the right to sue for a deficiency judgment,[11] and laws prohibiting the granting of a foreclosure decree unless the holders of at least 25% of the unpaid mortgage debt asked for such decree.[12]

On the other hand, it has been declared that even when the public welfare is invoked as an excuse, changes of the remedy may not be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression.[13] Thus, emergency statutory provisions similar to, or identical with, those above set forth have, by other authorities, been held void as impairing the obligation of contracts, despite their actual or purported emergency character,[14] particularly where the state constitution expressly subordinates the police power to the Contract Clause.[15]

Such holdings have been put on the various grounds that the suspension was not predicated on reasonable conditions safeguarding the creditor's rights,[16] that the operation of the statute was not limited to the duration of the emergency,[17] that no emergency actually existed to justify exercise of the police power,[18] that the mortgagee was divested permanently of an existing remedy[19] or temporarily of all remedy[20] or was deprived indefinitely of any substantial remedy,[21] and that the statute affected the rights of mortgagees who had foreclosed their mortgage prior to its enactment.[22] It has also been held that the grant of a continuance of a foreclosure suit constitutes an impairment of the mortgage obligation where the facts disclose no prospect of the mortgagor's ever redeeming the land.[23]

In the absence of a declaration by the legislature of the existence of any emergency, social, economic, or financial, or the nonexistence of which the court will take judicial notice, it has been held that a mortgage moratorium statute cannot be sustained.[24] A mortgage moratorium statute cannot be sustained on the ground that although state and national emergency necessitating its enactment in the first instance may have passed, the emergency had not passed so far as a particular mortgagor is concerned since the emergency requiring the enactment of such a statute is not intended to cover exigencies of individual cases.[25] Furthermore, a statute which indefinitely delayed the foreclosure of mortgages given by a matrimonial litigant to her attorney prior to the statute's enactment violated the Contract Clause as the impact of the statute was substantial even if it did not deprive the mortgage of all value, the restrictions imposed were not foreseeable, and the statute was aimed largely at protecting a single individual.[26]

Extension of emergency laws.

Extension of emergency mortgage moratorium laws impairing the obligations of mortgage contracts can be sustained only as a proper exercise of the police power, where the emergency existing at the time of enactment of the original statute exists at the time of enactment of the extending statute, and at the time of commencement of an action to foreclose a mortgage, and where the emergency is a temporary one, notwithstanding there are ample funds available for mortgage investment, and the realty market is active, and the emergency has been in existence a long period of time.[27]

It has also been held that subsequent legislation extending a mortgage foreclosure moratorium is not unconstitutional as impairing the obligation of a contract, where a sudden termination of moratorium legislation might result in an emergency more acute than that which the original legislation was intended to alleviate, nor is it negatived because factors that induced and constitutionally supported its enactment were different from those which induced and supported the original moratorium statute.[28] However, in the absence of an emergency warranting resort to the reserve police power at the time of the reenactment and extension of the provisions of a prior moratorium act, it is inoperative and invalid.[29]

Footnotes

1 Iowa—Des Moines Joint Stock Land Bank of Des Moines v. Nordholm, 217 Iowa 1319, 253 N.W. 701 (1934).
S.D.—Petition of Oleson, 68 S.D. 435, 3 N.W.2d 880 (1942).
As to validity of laws affecting remedies to enforce mortgages, generally, see § 630.
A.L.R. Library
Mortgage foreclosure forbearance statutes—modern status, 83 A.L.R.4th 243.

2 U.S.—East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).

3 Ark.—Reiman v. Rawls, 188 Ark. 983, 68 S.W.2d 470 (1934).
Iowa—Tusha v. Eberhart, 218 Iowa 1065, 256 N.W. 740 (1934).
Tex.—Williams v. Holmes, 74 S.W.2d 1040 (Tex. Civ. App. Beaumont 1934).

4 U.S.—East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).

5 Miss.—Wilson Banking Co. Liquidating Corporation v. Colvard, 172 Miss. 804, 161 So. 123 (1935).
N.Y.—East New York Savings Bank v. Hahn, 182 Misc. 863, 51 N.Y.S.2d 496 (Sup 1944), aff'd, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).
Ohio—Virginian Joint Stock Land Bank of Charleston v. Shaffer, 7 Ohio Op. 186, 21 Ohio L. Abs. 82, 32 N.E.2d 862 (Ct. App. 2d Dist. Darke County 1936).

6 Mich.—Hilliard v. Schram, 285 Mich. 686, 281 N.W. 405 (1938).
Miss.—Wilson Banking Co. Liquidating Corporation v. Colvard, 172 Miss. 804, 161 So. 123 (1935).
As to validity of redemption laws as other than emergency legislation, see § 636.

7 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).

8 N.Y.—McCarty v. Prudence-Bonds Corp., 149 Misc. 13, 266 N.Y.S. 629 (Sup 1933).

9 Iowa—Tusha v. Eberhart, 218 Iowa 1065, 256 N.W. 740 (1934).
Tex.—Williams v. Holmes, 74 S.W.2d 1040 (Tex. Civ. App. Beaumont 1934).

10 Ark.—Reiman v. Rawls, 188 Ark. 983, 68 S.W.2d 470 (1934).

11 Mich.—Guardian Depositors Corp. v. Powers, 296 Mich. 553, 296 N.W. 675 (1941).
N.Y.—Honeyman v. Clark, 278 N.Y. 467, 17 N.E.2d 131 (1938), judgment aff'd, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939).

12 U.S.—U.S. Mortg. Co. v. Matthews, 293 U.S. 232, 55 S. Ct. 168, 79 L. Ed. 299 (1934).

13 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

14 N.D.—Baird v. Gray, 63 N.D. 640, 249 N.W. 718 (1933).
Tex.—Harrigan v. Blagg, 124 Tex. 117, 77 S.W.2d 524 (1934).

15 Tex.—Harrigan v. Blagg, 124 Tex. 117, 77 S.W.2d 524 (1934).

16 Cal.—Brown v. Ferdon, 5 Cal. 2d 226, 54 P.2d 712 (1936).

17 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

18 Ariz.—Pouquette v. O'Brien, 55 Ariz. 248, 100 P.2d 979 (1940).
S.D.—Petition of Oleson, 68 S.D. 435, 3 N.W.2d 880 (1942).

19 Iowa—First Trust Joint Stock Land Bank of Chicago v. Arp, 225 Iowa 1331, 283 N.W. 441, 120 A.L.R. 932 (1939).
N.J.—Fidelity Union Trust Co. v. Bryant, 14 N.J. Misc. 243, 183 A. 825 (Sup. Ct. 1936).
Tex.—Cattle Raisers Loan Co. v. Doan, 86 S.W.2d 252 (Tex. Civ. App. Eastland 1935), writ refused, 127 Tex. 1, 86 S.W.2d 1082 (1935).

20 Tex.—Life Ins. Co. of Virginia v. Sanders, 62 S.W.2d 348 (Tex. Civ. App. El Paso 1933).

21 U.S.—Alliance Trust Co. v. Hall, 5 F. Supp. 285 (D. Idaho 1933).

22 Ala.—First Nat. Bank v. Jaffe, 239 Ala. 567, 196 So. 103 (1940).

23 **Reasonable expectation**
Iowa—John Hancock Mut. Life Ins. Co. of Boston, Mass. v. Schlosser, 222 Iowa 447, 269 N.W. 435 (1936).

24 Ariz.—Pouquette v. O'Brien, 55 Ariz. 248, 100 P.2d 979 (1940).

25 Ariz.—Pouquette v. O'Brien, 55 Ariz. 248, 100 P.2d 979 (1940).
S.D.—Petition of Oleson, 68 S.D. 435, 3 N.W.2d 880 (1942).

26 N.Y.—Schantz v. O'Sullivan, 11 A.D.3d 22, 780 N.Y.S.2d 813 (3d Dep't 2004).

27 N.Y.—East New York Savings Bank v. Hahn, 182 Misc. 863, 51 N.Y.S.2d 496 (Sup 1944), aff'd, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).

28 U.S.—East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).

29 Iowa—First Trust Joint Stock Land Bank of Chicago v. Arp, 225 Iowa 1331, 283 N.W. 441, 120 A.L.R. 932 (1939).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

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a. General Considerations

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§ 625. Validity of other emergency laws under constitutional protections of contractual obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2755, 2757, 2765

Emergency laws have been held valid in the context of leases and banking transactions.

So-called "emergency housing laws," enacted as an exercise of the police power in a declared emergency, and suspending a landlord's right to dispossess a holdover tenant by summary proceedings[1] or by ejectment,[2] have been uniformly held not to impair the obligation of the lease whether the statute itself suspends the remedy for a definite period[3] or authorizes the suspension in the discretion of the court;[4] and the fact that such remedy is expressly contracted for in the lease does not affect the validity of the law.[5]

Other emergency statutes under authority of which banking transactions were suspended,[6] stockholders'[7] or depositors'[8] remedies restricted, or delinquent taxpayers aided in avoiding forfeiture of their property[9] have also been sustained as being within the states' powers in a public emergency.

Footnotes

1 U.S.—Marcus Brown Holding Co. v. Feldman, 256 U.S. 170, 41 S. Ct. 465, 65 L. Ed. 877 (1921).
N.Y.—People ex rel. Durham Realty Corporation v. La Fetra, 230 N.Y. 429, 130 N.E. 601, 16 A.L.R. 152 (1921).

2 U.S.—Marcus Brown Holding Co. v. Feldman, 256 U.S. 170, 41 S. Ct. 465, 65 L. Ed. 877 (1921).
N.Y.—810 West End Ave. v. Stern, 230 N.Y. 652, 130 N.E. 931 (1921), aff'd, 258 U.S. 242, 42 S. Ct. 289, 66 L. Ed. 595 (1922).

3 U.S.—Marcus Brown Holding Co. v. Feldman, 256 U.S. 170, 41 S. Ct. 465, 65 L. Ed. 877 (1921).
N.Y.—810 West End Ave. v. Stern, 230 N.Y. 652, 130 N.E. 931 (1921), aff'd, 258 U.S. 242, 42 S. Ct. 289, 66 L. Ed. 595 (1922).

4 N.Y.—Blauweis v. Kirschner, 128 Misc. 630, 219 N.Y.S. 662 (App. Term 1927).

5 N.Y.—People ex rel. Durham Realty Corporation v. La Fetra, 230 N.Y. 429, 130 N.E. 601, 16 A.L.R. 152 (1921).

6 Ala.—Slaughter v. C. I. T. Corp., 26 Ala. App. 234, 157 So. 462 (1934).

7 U.S.—Veix v. Sixth Ward Building & Loan Ass'n of Newark, 310 U.S. 32, 60 S. Ct. 792, 84 L. Ed. 1061 (1940).
N.J.—Veix v. Seneca Bldg. & Loan Ass'n of Newark, 126 N.J.L. 314, 19 A.2d 219, 133 A.L.R. 1486 (N.J. Ct. Err. & App. 1941).
Ohio—Allen v. Shaker Heights Sav. Ass'n, 68 Ohio App. 445, 23 Ohio Op. 155, 35 Ohio L. Abs. 188, 39 N.E.2d 747 (8th Dist. Cuyahoga County 1941).

8 N.Y.—Shepherd v. Mt. Vernon Trust Co., 269 N.Y. 234, 199 N.E. 201 (1935).

9 Ark.—Sewer Imp. Dist. No. 1 of Wynne v. Delinquent Lands, 188 Ark. 738, 68 S.W.2d 80 (1934).

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16A C.J.S. Constitutional Law § 626

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a. General Considerations

(2) Rights, Remedies, Procedural Matters, and Defenses

§ 626. Laws creating, extending, or reducing limitations periods

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765, 2766

Statutes creating, extending, or reducing a period of limitation are generally held not to impair the obligation of prior contracts if they provide for a reasonable time in which to bring suit and do not entirely take away, or unreasonably encumber, all remedies.

It is broadly held that the legislature has power to pass laws establishing limitation periods where none had existed,[1] or changing existing ones,[2] without violating any constitutional prohibition. Further, because statutes of limitation relate merely to the remedy, and not to substantive rights, they are not unconstitutional simply because made applicable to existing contracts.[3] This is so even though they extinguish some property rights.[4] A legislature may decide that an amended statute of limitations should apply to existing causes of action as long as doing so does not impair a vested right or contractual obligation.[5] Passage of a new statute of limitations giving a shorter time for bringing of actions than existed before does not necessarily affect the remedy to such an extent as to be an unconstitutional impairment of contracts provided a reasonable time is given for bringing of such

actions.[6] An amendment that shortens an existing statute of limitations cannot extinguish a cause of action that has already accrued without giving the plaintiff a reasonable opportunity to bring suit after the effective date of the amendment.[7]

In accordance with the general rules above stated, an act shortening the period of limitations is not unconstitutional as applied to existing, as well as future, contracts if it provides for ample[8] or reasonable[9] time for bringing actions on past contracts before such actions are barred. Such laws are void, however, as impairing the obligation of contracts if they reduce the time for bringing suit to such an extent as to be unreasonable[10] or leave a party with no remedy or no opportunity to bring an action.[11]

It is likewise generally held that the legislature may validly extend the period of limitation as a statute so doing affects merely the remedy and not substantive contractual rights.[12] A qualification maintained by a number of authorities is that, where an action on a contract is once barred by a statute of limitations, an act attempting to remove the bar, or having the effect of removing it, is unconstitutional as to such contract as impairing contract rights of defendant.[13]

Period fixed by contract.

The power of the legislature to alter the terms of a contract by a statute extending the period in which a suit may be brought thereon beyond that expressly agreed on by the parties has been both upheld[14] and denied.[15]

Revival.

To avoid impairing a vested right or contractual obligation, an amended statute of limitations cannot revive causes of action that have already expired prior to the effective date of the amendment.[16] However, it has also been held that a revival statute does not work an impermissible impairment of contract because it merely affects the remedy for the violation of the contract, not the obligations contained within it.[17] Revival of a remedy infringes the Constitution only when the action impairs the obligation of the contract, and such inhibition is invoked when it is sought to enforce the restored remedy in invitum.[18]

Footnotes

1 N.Y.—Stuebner v. Stuebner, 184 Misc. 1034, 55 N.Y.S.2d 710 (Sup 1945).

2 Fla.—Ruhl v. Perry, 390 So. 2d 353 (Fla. 1980).
Products liability claims
An eight-year statute of limitations for products liability claims did not violate the impairment of contract provisions of the federal or state constitutions as applied to an automobile first purchased for use prior to the adoption of that statute since contract rights that arise from the sale of a vehicle do not bind the legislature to retain remedies that existed at the time the vehicle was sold.
Or.—Marinelli v. Ford Motor Co., 72 Or. App. 268, 696 P.2d 1 (1985).

3 Iowa—Amana Soc. v. Colony Inn, Inc., 315 N.W.2d 101 (Iowa 1982).
Tex.—Lee v. Universal Life Ins. Co., 420 S.W.2d 222 (Tex. Civ. App. Houston 14th Dist. 1967), writ refused n.r.e., (Jan. 24, 1968).

4 Ind.—Short v. Texaco, Inc., 273 Ind. 518, 406 N.E.2d 625 (1980), judgment aff'd, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).

5 Tenn.—Pacific Eastern Corp. v. Gulf Life Holding Co., 902 S.W.2d 946 (Tenn. Ct. App. 1995).

6 Iowa—Amana Soc. v. Colony Inn, Inc., 315 N.W.2d 101 (Iowa 1982).
La.—Matter of Filiation of Jones, 463 So. 2d 961 (La. Ct. App. 3d Cir. 1985).

7 Tenn.—Pacific Eastern Corp. v. Gulf Life Holding Co., 902 S.W.2d 946 (Tenn. Ct. App. 1995).

8 Fla.—Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 (1944).

N.M.—Hoover v. City of Albuquerque, 1954-NMSC-043, 58 N.M. 250, 270 P.2d 386 (1954).

9 La.—Reichenphader v. Allstate Ins. Co., 418 So. 2d 648 (La. 1982), overturned due to legislative action in 1987 La. Sess. Law Serv. 124.

Reasonable expectations

Legislation displacing a two-year contractual limitations period with a three-year limitations for underinsured motorist claims did not violate the Contract Clause of United States Constitution as any impairment of contractual relationship was minimal; given the state's intense regulation of insurance industry and the extensive period of such regulation, the insurer's reasonable expectations could not have been substantially impaired.

Conn.—Aetna Life and Cas. Co. v. Braccidiferro, 34 Conn. App. 833, 643 A.2d 1305 (1994).

Year to file suit

Fla.—Ruhl v. Perry, 390 So. 2d 353 (Fla. 1980).

10 Miss.—Bell v. Union & Planters' Bank & Trust Co., 158 Miss. 486, 130 So. 486 (1930).

Pa.—Girard Trust Co. v. Pennsylvania R. Co., 364 Pa. 576, 73 A.2d 371 (1950).

11 Conn.—American Mason's Supply Co. v. F. W. Brown Co., 29 Conn. Supp. 203, 280 A.2d 366 (Super. Ct. 1971).

Ind.—Railway Exp. Agency v. Harrington, 119 Ind. App. 593, 88 N.E.2d 915 (1949).

Pa.—Girard Trust Co. v. Pennsylvania R. Co., 364 Pa. 576, 73 A.2d 371 (1950).

12 Cal.—Bakersfield Home Bldg. Co. v. J.K. McAlpine Land & Development Co., 26 Cal. App. 2d 444, 79 P.2d 410 (4th Dist. 1938).

Mo.—Wentz v. Price Candy Co., 352 Mo. 1, 175 S.W.2d 852 (1943).

Okla.—Case v. Pinnick, 1939 OK 467, 186 Okla. 217, 97 P.2d 58 (1939).

Extension of prescriptive period for filing insurance claim

The impairment of property insurers' contract rights as result of statutes extending for one year prescriptive periods for filing claims arising from Hurricanes Katrina and Rita did not violate state or federal contract clauses; state law has traditionally regulated insurance as a matter of public policy, the extensions were based upon significant and legitimate public purpose, the State was not providing a benefit to a special interest, and its ownership of insured property damaged by the hurricanes was incidental to the scope of the matter at issue.

La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

13 Cal.—Bakersfield Home Bldg. Co. v. J.K. McAlpine Land & Development Co., 26 Cal. App. 2d 444, 79 P.2d 410 (4th Dist. 1938).

Tex.—Crow v. Willard, 110 S.W.2d 161 (Tex. Civ. App. Amarillo 1937).

As to vested rights as to causes of action already barred, see § 502.

14 Va.—Smith & Marsh v. Northern Neck Mut. Fire Ass'n of Virginia, 112 Va. 192, 70 S.E. 482 (1911).

As to remedies expressly contracted for, generally, see § 621.

15 U.S.—Home Ins. Co. v. Dick, 281 U.S. 397, 50 S. Ct. 338, 74 L. Ed. 926, 74 A.L.R. 701 (1930).

Ill.—Dickirson v. Pacific Mut. Life Ins. Co., 319 Ill. 311, 150 N.E. 256 (1925).

Impairment of contractual obligations and rights

An Indiana statute setting out the minimum suit limitation in an insurance policy to not less than two years from the date of the loss could not be retroactively applied to a homeowner's policy containing a one year suit limitation provision since such application would impair the contractual obligations of the insureds and impair the contractual rights held by insurer.

U.S.—Royer v. USAA Cas. Ins. Co., 781 F. Supp. 2d 767 (N.D. Ind. 2011).

16 Tenn.—Pacific Eastern Corp. v. Gulf Life Holding Co., 902 S.W.2d 946 (Tenn. Ct. App. 1995).

17 Cal.—Ashou v. Liberty Mut. Fire Ins. Co., 138 Cal. App. 4th 748, 41 Cal. Rptr. 3d 819 (2d Dist. 2006); 20th Century Ins. Co. v. Superior Court, 90 Cal. App. 4th 1247, 109 Cal. Rptr. 2d 611 (2d Dist. 2001).

18 N.C.—B-C Remedy Co. v. Unemployment Compensation Commission of N. C., 226 N.C. 52, 36 S.E.2d 733, 163 A.L.R. 773 (1946).

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(2) Rights, Remedies, Procedural Matters, and Defenses

§ 627. Laws imposing penalties and forfeitures

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2763

The legislature, acting within the police power, may impose penalties or forfeitures although its action may interfere with or forbid the further performance of prior contracts.

Statutes enacted within the scope of the police power which impose penalties or forfeitures on the commission of certain acts are valid, within constitutional provisions against laws impairing the obligation of contracts, although they may interfere with or forbid the further performance of prior contracts.[1]

The retroactive application of a statute prohibiting the entry of a final judgment until 18 months after the date of a bond forfeiture impaired a state's vested rights under the bail bond and violated the constitutional provision that prohibits laws impairing obligation of contracts.[2] A civil penalty issued to a surety undertaking a reclamation on behalf of a defaulting coal mine permit holder for a violation of a statute governing the reclamation of strip mine lands does not impair the obligation of contracts

where the civil penalty was enacted as an enhancement of a previously existing law, and where the violation occurred after the effective date of the penalty provision, even though the provision was enacted after the surety bond was executed.[3] Further, a statute relating to late charges on unpaid assessments that operates only where deed restrictions do not otherwise provide does not serve to withdraw or remove any contractual obligation and therefore does not impair the obligation of contracts.[4]

Footnotes

1 Ala.—City of Mobile v. Merchants Nat. Bank of Mobile, 250 Ala. 159, 33 So. 2d 457 (1948).
N.J.—State by Parsons v. Standard Oil Co., 5 N.J. 281, 74 A.2d 565 (1950), judgment aff'd, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
Pa.—In re Philadelphia Elec. Co., 352 Pa. 457, 43 A.2d 116 (1945).

2 Tex.—Keith v. State, 760 S.W.2d 746 (Tex. App. Fort Worth 1988), petition for discretionary review granted, (July 26, 1989) and judgment aff'd, 802 S.W.2d 690 (Tex. Crim. App. 1990).

3 Ohio—Personal Service Ins. Co. v. Mamone, 22 Ohio St. 3d 107, 489 N.E.2d 785 (1986).

4 Tex.—Brooks v. Northglen Ass'n, 141 S.W.3d 158 (Tex. 2004).

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(2) Rights, Remedies, Procedural Matters, and Defenses

§ 628. Statutes creating or enlarging defenses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765

Statutes creating or enlarging defenses so as to render prior contracts unenforceable are void as to them although laws merely liberalizing the procedure for asserting defenses, or limiting or abolishing defenses which were available to a party when contracting, are generally held valid as to prior contracts.

A statute creating or enlarging a defense to an action on a contract is void where the effect is to take away all remedy for the enforcement of a contract valid and enforceable when made.[1] However, a statute which merely liberalizes the procedure for the assertion of defenses inhering in contracts when made is valid[2] as, for example, an act which creates a defense affecting the remedy only[3] or which affords plaintiff an opportunity to avoid the defense entirely.[4]

As a general rule, the legislature may limit defenses which a party was entitled to assert under the law in force when the contract was made.[5] It may also abolish such defenses,[6] such as the defense of usury,[7] as a statute so doing does not impair but rather strengthens the obligation of the contract.[8]

Defenses to insurance contracts.

A statute, taking away the defense of suicide of the insured, valid at the time the contract was made, impairs, it appears, the obligation of the contract and is void.[9] However, it is otherwise where such defense was invalid under statutes existing at the time the contract was made, but since repealed, as the new statute simply leaves the contract as it was originally.[10] The repeal of a statute forbidding the defense of suicide is void as to policies issued while such statute was in force.[11]

Setoff and counterclaim.

As a general rule, a law providing for the setoff of mutual debts does not impair the obligation of contracts.[12]

Negligence claim.

A legislative determination that a party may not assert a defense in a cause of action for negligence does not impair contracts or disturb vested rights.[13]

Footnotes

1 Ga.—Guest v. Stone, 206 Ga. 239, 56 S.E.2d 247 (1949).
Tex.—Purser v. Pool, 145 S.W.2d 942 (Tex. Civ. App. Eastland 1940).
As to withdrawal of all remedy, generally, see § 620.

2 **Statute allowing surety defenses available to principal**
Vt.—Flagg v. Locke, 74 Vt. 320, 52 A. 424 (1902).

3 Ohio—George I. Cramer, Inc., v. Patterson, 25 Ohio App. 130, 4 Ohio L. Abs. 783, 157 N.E. 398 (8th Dist. Cuyahoga County 1926).

4 Ky.—Kennedy v. Kennedy, 197 Ky. 784, 248 S.W. 182 (1923).

5 Tex.—City of Rising Star v. Dill, 259 S.W. 652 (Tex. Civ. App. Fort Worth 1923), writ granted, (Mar. 12, 1924) and aff'd, 269 S.W. 769 (Tex. Comm'n App. 1925).

6 Conn.—Dowaliby v. Hartford Federation of Teachers, Local 1018, American Federation of Teachers, AFL-CIO, 180 Conn. 459, 429 A.2d 950 (1980).
Fla.—Coe v. Muller, 74 Fla. 399, 77 So. 88 (1917).

7 Fla.—Coe v. Muller, 74 Fla. 399, 77 So. 88 (1917).

8 Mont.—Mutual Ben. Life Ins. Co. v. Winne, 20 Mont. 20, 49 P. 446 (1897).

9 U.S.—Knights Templars' & Masons' Life Indemnity Co. v. Jarman, 187 U.S. 197, 23 S. Ct. 108, 47 L. Ed. 139 (1902).
As to statutes affecting insurance companies generally, as affecting the obligation of contracts, see § 616.

10 U.S.—Knights Templars' & Masons' Life Indemnity Co. v. Jarman, 187 U.S. 197, 23 S. Ct. 108, 47 L. Ed. 139 (1902).

11 Colo.—Modern Broth. of America v. Lock, 22 Colo. App. 409, 125 P. 556 (1912).

12 U.S.—Blount v. Windley, 95 U.S. 173, 24 L. Ed. 424, 1877 WL 18644 (1877).
Right controlled by statute
Right of agents and brokers to set off their earned commissions against premiums collected by them and held in trust for an insolvent insurer was governed by a statute permitting setoff only if the debts were mutual,

not by a contract with the insurer and the Contract Clause; the offset statute was deemed to be part of the contract and, thus, was not superseded by it under the constitutional prohibition against law impairing an obligation of contracts.

Ill.—Lincoln Towers Ins. Agency, Inc. v. Boozell, 291 Ill. App. 3d 965, 225 Ill. Dec. 909, 684 N.E.2d 900 (1st Dist. 1997).

13 Pa.—Solonoski by Solonoski v. Yuhas, 657 A.2d 137 (Pa. Commw. Ct. 1995).

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16A C.J.S. Constitutional Law § 629

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a. General Considerations

(3) Specific Contracts or Laws

§ 629. Insurance contracts as within protection against impairment of contracts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2758

Statutes which merely alter the remedy of a party in the enforcement of an insurance contract and do not infringe on substantial contractual rights are not unconstitutional.

Statutes which merely alter the remedy of a party in the enforcement of an insurance contract and do not infringe on substantial contractual rights are not unconstitutional,[1] such as statutes permitting a direct right of action against an insurer in the first instance without obtaining a judgment against the tortfeasor.[2] Likewise, a statute requiring an insurer to provide reasonable notice of nonrenewal of the insurance policy does not constitute an unconstitutional impairment of contracts.[3]

Footnotes

1 Mich.—Cosby v. Pool, 36 Mich. App. 571, 194 N.W.2d 142 (1971).
N.Y.—Moke Realty Corp. v. Whitestone Sav. & Loan Ass'n, 82 Misc. 2d 396, 370 N.Y.S.2d 377 (Sup 1975), judgment aff'd, 51 A.D.2d 1005, 382 N.Y.S.2d 289 (2d Dep't 1976), order aff'd, 41 N.Y.2d 954, 394 N.Y.S.2d 881, 363 N.E.2d 587 (1977).
Tex.—Empire Life and Hospital Ins. Co. v. Harris, 595 S.W.2d 904 (Tex. Civ. App. Austin 1980).

Remedies for insurers' bad faith acts

The application of a Pennsylvania statute providing remedies for an insurer's bad faith acts toward an insured would not violate federal or state constitutional prohibitions against laws impairing obligations of contract, even though the subject automobile policy was entered into prior to the statute's effective date, as long as the insured could prove that bad faith conduct occurred after the statute's effective date.
U.S.—Seeger by Seeger v. Allstate Ins. Co., 776 F. Supp. 986 (M.D. Pa. 1991).

Retroactive application of good faith statute

The retroactive application of Maryland's good faith statute would not violate the Contract Clause, even though it allowed a plaintiff to seek expenses and litigation costs, including reasonable attorney's fees, as well as interest on those costs, such that the potential costs of litigation from breaches of contract were higher; the substantive rights and obligations of the parties were not altered by the statute, which only operated if a court or jury first found that the insurer breached the insurance contract, the contract remained legally enforceable with no change to the bargained-for terms, and even assuming a substantial impairment, the statute was permissible as a legitimate exercise of the State's police power.
U.S.—Cecilia Schwaber Trust Two v. Hartford Acc. and Indem. Co., 636 F. Supp. 2d 481 (D. Md. 2009).

Punitive damages

The obligations of the Contract Clause of the Federal Constitution does not preclude an award of punitive damages against an insurer for tortious breach of contract pursuant to state common law.
U.S.—Guy v. Commonwealth Life Ins. Co., 698 F. Supp. 1305 (N.D. Miss. 1988), judgment aff'd in part, rev'd in part on other grounds, 894 F.2d 1407 (5th Cir. 1990).

2 U.S.—Bouis v. Aetna Cas. & Sur. Co., 91 F. Supp. 954 (W.D. La. 1950).
La.—Talbot v. Allstate Ins. Co., 76 So. 2d 76 (La. Ct. App. 2d Cir. 1954).

3 R.I.—Newman v. Cambridge Mut. Fire Ins. Co., 476 A.2d 113 (R.I. 1984).

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(3) Specific Contracts or Laws

§ 630. Mortgages as within protection against impairment of contracts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2760, 2761

Although the substantial rights of the parties may not be taken away, the legislature may alter details of the remedies for enforcing the rights of mortgagees without impairing the obligation of contracts.

Details of the law relating to the remedies of mortgagees for enforcing their rights may be changed without impairing the obligation of existing contracts,[1] although no substantial rights of the mortgagee to the enforcement of the security can be taken away,[2] unless the parties by their contract may be said to have contemplated such changes.[3] A statute providing a private right of action for a mortgagee's violation of mortgage servicer licensing requirements did not violate the contract clause of either the federal or state constitution where the statute was in force and effect when the contract was made and therefore was part of the contract terms by implication.[4]

Impairment by judicial decision.

It has been declared that a decree refusing foreclosure and permitting a sale of the mortgaged property free of the mortgage lien violates the constitutional provision prohibiting the impairment of the obligation of contracts;[5] but this holding is to be compared with the consideration of judicial decisions as not violating such provision.[6] A court order setting aside a foreclosure sale for price inadequacy does not impair the obligation of the mortgage,[7] and no constitutional or contract right of a mortgagee is impaired by a requirement that mortgaged property be subjected to strict foreclosure in the inverse order of alienation where the value of the property first to be thus subjected exceeds the amount of the mortgage debt.[8] Furthermore, the tolling of interest in a mortgage foreclosure action does not violate the Contract Clause since the Contract Clause is not an absolute and utterly unqualified restriction, and because foreclosure is an equitable remedy, a court is required to employ the appropriate, permissible, and authorized remedies, tailored to the circumstances of the case.[9]

Footnotes

1 U.S.—Conley v. Barton, 260 U.S. 677, 43 S. Ct. 238, 67 L. Ed. 456 (1923).
Alaska—Hagberg v. Alaska Nat. Bank, 585 P.2d 559 (Alaska 1978).

2 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

3 U.S.—U.S. Mortg. Co. v. Matthews, 293 U.S. 232, 55 S. Ct. 168, 79 L. Ed. 299 (1934).

4 Minn.—Gretsch v. Vantium Capital, Inc., 846 N.W.2d 424 (Minn. 2014).

5 Pa.—Commissioners of Sinking Fund of City of Philadelphia v. City of Philadelphia, 324 Pa. 129, 188 A. 314, 113 A.L.R. 202 (1936).

6 § 514.

7 N.D.—First Nat. Bank v. Paulson, 69 N.D. 512, 288 N.W. 465 (1939).
Pa.—Peoples-Pittsburgh Trust Co. v. Blickle, 330 Pa. 398, 199 A. 213 (1938).

8 Conn.—New England Mortg. Realty Co. v. Rossini, 121 Conn. 214, 183 A. 744 (1936).

9 N.Y.—Bank of America N.A. v. Lucic, 45 Misc. 3d 916, 997 N.Y.S.2d 594 (Sup 2014).

16A C.J.S. Constitutional Law § 631

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§ 631. Mortgages as within protection against impairment of contracts—Deficiency judgments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2760, 2761

Although all right to a deficiency judgment may not be abolished by statute, statutes abolishing the right to a deficiency judgment in equitable foreclosure, but leaving the legal remedy on the debt, have been held not to impair the obligation of contracts.

A statute taking away the right to recover a deficiency judgment in a proceeding for equitable foreclosure, but leaving the legal remedy on the debt unimpaired, has been held not to impair the obligation of contracts[1] although there is also authority to the contrary.[2]

As applied to existing mortgages, a statute is void, as impairing the obligation of contracts, which directly, or in effect, altogether prohibits deficiency judgments,[3] even though the prohibition applies only where the value of the mortgaged property at the time the mortgage was executed equaled or exceeded the amount of the mortgage debt.[4] A statute is also void for such reason which

impairs the right to a deficiency judgment,[5] or which unconditionally postpones the right to bring an action for such judgment,[6] or precludes a deficiency judgment unless the foreclosure sale is confirmed,[7] or which alters the basis for determining the amount of the deficiency by substituting the fair value,[8] or the fair market value,[9] of the property for the proceeds of the foreclosure sale.

It has been held, however, that the fair market value of the property, where greater than the price bid, may be made the basis for determining the amount of the deficiency where the mortgagee purchases the property,[10] and it has been held that this rule should also extend to cases in which a third person becomes the purchaser.[11]

Footnotes

1 U.S.—Parker Bros. v. Fagan, 68 F.2d 616 (C.C.A. 5th Cir. 1934).
Fla.—Van Sant v. Duval Cattle Co., 116 Fla. 159, 156 So. 369 (1934).
No substantial impairment
The Michigan Nonrecourse Mortgage Loan Act (NMLA) did not operate as a substantial impairment of a nonrecourse commercial mortgage-backed securities (CMBS) loan by rendering a solvency covenant, i.e., a prohibition against insolvency or failure to pay debts for any other reason, unenforceable, barring a deficiency judgment based on default due to insolvency, and thus, the NMLA did not violate the Contract Clause; neither the lender nor the borrower relied on the solvency covenant or reasonably expected a right to obtain a deficiency judgment because, among other things, the lender foreclosed on the property and sold it at auction without seeking a deficiency and advertised the loan as "non-recourse."
U.S.—Borman, LLC v. 18718 Borman, LLC, 777 F.3d 816 (6th Cir. 2015).

2 Neb.—Burrows v. Vanderbergh, 69 Neb. 43, 95 N.W. 57 (1903).

3 Ark.—Adams v. Spillyards, 187 Ark. 641, 61 S.W.2d 686, 86 A.L.R. 1493 (1933).
Cal.—Hales v. Snowden, 19 Cal. App. 2d 366, 65 P.2d 847 (2d Dist. 1937).
N.Y.—Tompkins County Trust Co. v. Herrick, 171 Misc. 929, 13 N.Y.S.2d 825 (Sup 1939).

4 Ariz.—Bontag v. McCurdy, 48 Ariz. 168, 59 P.2d 326 (1936).

5 N.Y.—Home Owners' Loan Corp. v. Margolis, 168 Misc. 945, 6 N.Y.S.2d 432 (Sup 1938).

6 Cal.—Central Bank of Oakland v. Proctor, 5 Cal. 2d 237, 54 P.2d 718 (1936).

7 Ga.—Atlantic Loan Co. v. Peterson, 181 Ga. 266, 182 S.E. 15 (1935).

8 Pa.—Beaver County Bldg. & Loan Ass'n v. Winowich, 323 Pa. 483, 187 A. 481 (1936).

9 Cal.—Bechtel v. Nelson, 10 Cal. App. 2d 66, 51 P.2d 99 (1st Dist. 1935).
N.J.—Alert Bldg. & Loan Ass'n of City of Newark v. Bechtold, 120 N.J.L. 397, 199 A. 734 (N.J. Ct. Err. & App. 1938).

10 U.S.—Gelfert v. National City Bank of New York, 313 U.S. 221, 61 S. Ct. 898, 85 L. Ed. 1299, 133 A.L.R. 1467 (1941).
Mich.—Guardian Depositors Corp. v. Powers, 296 Mich. 553, 296 N.W. 675 (1941).
Pa.—Fidelity-Philadelphia Trust Co. v. Allen, 343 Pa. 428, 22 A.2d 896 (1941).
Amount of recovery
Statutory application of an equitable principle that a mortgagee may not recover more than amount due did not violate the obligation of contracts although applied to mortgages executed prior to the statutory enactment.
U.S.—Honeyman v. Jacobs, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939).

11 N.Y.—Primary Realty Corp. v. Librett, 178 Misc. 40, 32 N.Y.S.2d 7 (Sup 1941).

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§ 632. Mechanics' liens; impairment of contracts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2760

Although the substantial rights of the parties may not be taken away, the legislature may alter details of the remedies for enforcing liens without impairing the obligation of contracts.

The liberal application of the revised versions of statutes governing mechanics' liens and materialmen's liens, so as to allow a contractor to amend its lien enforcement complaint to correct procedural defects, did not retroactively impair the constitutional rights of a bank that possessed a deed of trust against the property where the revisions to the lien statutes were procedural rather than substantive, liberal application of the revised statutes did not create a new lien or right, and the bank did not have a vested interest in the strict construction of the lien statutes.[1]

Footnotes

1 Tenn.—Tri Am Const., Inc. v. J & V Development, Inc., 415 S.W.3d 242 (Tenn. Ct. App. 2011).

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(3) Specific Contracts or Laws

§ 633. Insolvency laws; impairment of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2762

A state insolvency law, providing for the discharge of debts contracted before its passage, violates the constitutional prohibition against impairing the obligation of contracts.

While Congress in the exercise of its bankruptcy powers may impair the obligation of contracts,[1] a state is without power to make or enforce any law governing bankruptcies that impairs the obligation of contracts,[2] and a state insolvency law, providing for the discharge of debts contracted before its passage, violates the constitutional prohibition against impairing the obligation of contracts.[3]

Insolvency statutes have been held not to impair the obligation of prior contracts by discharging judgments in bankruptcy, thereby precluding a continuing cloud on the bankrupt's title to real property, a specified period of time after the bankrupt was discharged from debts.[4]

Regulation of priorities.

While some authorities have sustained an act regulating the priorities as between creditors whose debts were contracted prior to its passage,[5] others have ruled that in its application to prior contracts, such a statute or constitutional provision is unconstitutional as impairing their obligation,[6] and the latter rule has been said to be supported by the weight of authority and reason.[7]

An act which gave depositors priority in payment over other unsecured creditors upon the liquidation of state-regulated banks and financial institutions does not impair contractual obligations, even though, under traditional receivership law, depositors and general creditors would share in any available assets on pro rata basis, as the priority does not impair a contractual relationship but affects only the timing of payment.[8]

Footnotes

1 U.S.—Kuehner v. Irving Trust Co., 299 U.S. 445, 57 S. Ct. 298, 81 L. Ed. 340 (1937); In re Varanasi, 394 B.R. 430 (Bankr. S.D. Ohio 2008).
As to the impairment of obligation of contracts by Congress, generally, see § 511.

2 U.S.—International Shoe Co. v. Pinkus, 278 U.S. 261, 49 S. Ct. 108, 73 L. Ed. 318 (1929).

3 U.S.—Faitoute Iron & Steel Co. v. City of Asbury Park, N.J., 316 U.S. 502, 62 S. Ct. 1129, 86 L. Ed. 1629 (1942).
As to the impairment of corporate obligations by insolvency laws, see § 611.

4 Fla.—Albritton v. General Portland Cement Co., 344 So. 2d 574 (Fla. 1977).

5 Mich.—Stott v. Stott Realty Co., 288 Mich. 35, 284 N.W. 635 (1939).

6 Wis.—In re Banski's Guardianship, 226 Wis. 361, 276 N.W. 626 (1937).

7 Wis.—In re Banski's Guardianship, 226 Wis. 361, 276 N.W. 626 (1937).

8 R.I.—In re Advisory Opinion to Governor (DEPCO), 593 A.2d 943 (R.I. 1991).

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§ 634. Exemption laws; impairment of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2762, 2772, 2774

Laws materially extending exemptions from attachment or execution are, as far as applied to previously contracted debts, unconstitutional as impairing the obligation of contracts by destroying the remedy in material respects.

The validity of statutes creating or increasing exemptions of property from execution or attachment for debts contracted before their enactment has been upheld in a number of decisions of state courts.[1] For example, statutes increasing the amount of wages exempt from garnishment have been found to be valid.[2] Such decisions are based on the principle that such laws relate merely to the remedy for the enforcement of contracts, and do not impair their obligation or take away all remedy for their enforcement,[3] or that the enactment of such laws is a valid exercise of the State's police power, and such enactments have a significant and legitimate public purpose such as the remedying of a general social or economic problem.[4] Further, statutes providing that debtors are entitled to an exemption in funds in an individual retirement account (IRA) can be applied retroactively to creditors whose contractual claims arose prior to the statute's effective date without violating the Contract Clause as such exemption

statutes are a reasonable and necessary means of achieving a legitimate state objective to ensure that people are not left destitute by attachment of their retirement plans.[5]

When a statutory exemption scheme has been in place for a long period of time, and has been subject to amendments increasing the exemption amount, an increase, even if applied retroactively, does not impair the contractual expectations of creditors.[6] However, there is authority to the effect that laws materially extending exemptions from attachment or execution are, as far as applied to previously contracted debts, unconstitutional as impairing the obligation of contracts by destroying the remedy in material respects.[7] A legislature's modification of contractual enforcement remedies by its amendment of an exemption is an unconstitutional impairment of preexisting contracts where the modification substantially enlarges the scope of the exemption and thereby substantially reduces the enforcement value of the contract and does so unreasonably.[8]

Statutes repealing[9] or diminishing[10] exemptions are not void in their application to prior contracts as they strengthen or enlarge the remedy for the enforcement of such contracts.

Footnotes

1 Ala.—Coffman v. Folds, 216 Ala. 133, 112 So. 911 (1927).

2 La.—Hooter v. Wilson, 273 So. 2d 516 (La. 1973).

3 Ala.—Coffman v. Folds, 216 Ala. 133, 112 So. 911 (1927).
La.—Hooter v. Wilson, 273 So. 2d 516 (La. 1973).

4 U.S.—In re Van Hove, 78 B.R. 917 (N.D. Iowa 1987).

5 U.S.—In re Walker, 139 B.R. 31 (N.D. Okla. 1990), judgment aff'd, 959 F.2d 894, 133 A.L.R. Fed. 577 (10th Cir. 1992); In re Brilley, 148 B.R. 39 (Bankr. C.D. Ill. 1992); In re Seltzer, 159 B.R. 329 (Bankr. D. Nev. 1993).
A.L.R. Library
Nonspousal Inherited Individual Retirement Account as Exempt Property in Bankruptcy, 83 A.L.R. Fed. 2d 193.

6 U.S.—In re Van Hove, 78 B.R. 917 (N.D. Iowa 1987); In re Larson, 260 B.R. 174 (Bankr. D. Colo. 2001).

7 U.S.—Kener v. La Grange Mills, 231 U.S. 215, 34 S. Ct. 83, 58 L. Ed. 189 (1913).
Miss.—Builders Supply Co. of Hattiesburg v. Pine Belt Sav. & Loan Ass'n, 369 So. 2d 743 (Miss. 1979).

8 U.S.—In re Garrison, 108 B.R. 760 (Bankr. N.D. Okla. 1989).
Tax-qualified retirement plan interests
U.S.—In re Dickson, 114 B.R. 740 (Bankr. N.D. Okla. 1990).

9 N.Y.—Lynch v. American Linseed Co., 113 A.D. 502, 99 N.Y.S. 260 (2d Dep't 1906).
Tex.—Lyon & Matthews Co. v. Modern Order of Praetorians, 142 S.W. 29 (Tex. Civ. App. Fort Worth 1911).

10 N.Y.—Brearley School v. Ward, 201 N.Y. 358, 94 N.E. 1001 (1911).

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§ 635. Impairment of contract obligations; homestead exemptions

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 2762, 2772, 2774

A constitutional or statutory provision establishing or materially increasing homestead exemptions, or granting such exemptions without previously prescribed conditions, is ordinarily void as to prior obligations.

A constitutional or statutory provision establishing or materially increasing a homestead exemption is within the federal prohibition of laws impairing the obligation of contracts insofar as it relates to debts contracted before its adoption.[1] Likewise, a statute is void which allows a homestead exemption as against prior obligations without compliance with conditions prescribed by the law in force when they were created.[2]

Even if an increase in a homestead exemption is found to impair contracts of indebtedness, economic interests of the State may justify the modification.[3] This is so at least where the increase is reasonable and the impairment is insubstantial when balanced against the governmental object pursued.[4] Furthermore, such exemption laws are valid where the property involved was already

exempt under a law in force at the time the contract was executed[5] or where the value of the property actually selected was not greater than was allowed by such earlier law.[6] Likewise, a statute which contains more procedural safeguards for the benefit of a homeowner, but which does not alter the substance of a prior homestead exemption law, is valid.[7]

When a statutory homestead exemption scheme has been in place for a long period of time, and has been subject to amendments increasing the exemption amount, an increase in the exemption, even if applied retroactively, does not impair the contractual expectations of creditors.[8] Even if an amendment increasing an exemption amount imposes a substantial impairment on a creditor's rights to the extent it was applied retroactively to contract debts incurred prior to the amendment's effective date, the retroactive application of the amendment served a significant and legitimate public purpose, and thus, it did not violate the Contract Clause where it expanded the class of debtors who would be able to keep their homes despite declaring bankruptcy.[9]

Bankruptcy Code provision.

While Congress in the exercise of its bankruptcy powers may impair the obligation of contracts,[10] Congress, in enacting a Bankruptcy Code provision that required that any homestead exemption claimed be the more generous exemption available under federal or state law, did not violate any contractual expectations protected by the Contract Clause not only because the Contract Clause did not apply to the federal government but also because creditors could have no reasonable expectation in the application of any specific exemption law.[11]

Footnotes

1 U.S.—Fidelity & Deposit Co. of Md. v. Lovell, 108 F. Supp. 360 (S.D. Miss. 1952), judgment aff'd, 214 F.2d 565 (5th Cir. 1954); Matter of Echavarren, 2 B.R. 215 (Bankr. D. Idaho 1980).
Fla.—Harrell v. State ex rel. Austin-Western Road Machinery Co., 146 Fla. 144, 200 So. 390 (1941).
La.—Daniel v. Thigpen, 194 La. 522, 194 So. 6 (1940).
As to a homestead exemption as a vested right, see § 481.

2 La.—Blouin v. Ledet, 109 La. 709, 33 So. 741 (1903).
Prior declaration requirement
Exemption cannot be claimed where prior law, requiring a debtor to record a declaration of homestead prior to a creditor's recording of an abstract of judgment, is not complied with.
U.S.—In re LaFortune, 652 F.2d 842 (9th Cir. 1981).

3 La.—Ouachita Nat. Bank in Monroe v. Rowan, 345 So. 2d 1014 (La. Ct. App. 2d Cir. 1977).
Wash.—Macumber v. Shafer, 96 Wash. 2d 568, 637 P.2d 645 (1981).

4 Cal.—San Diego White Truck Co. v. Swift, 96 Cal. App. 3d 88, 157 Cal. Rptr. 745 (4th Dist. 1979).
La.—Ouachita Nat. Bank in Monroe v. Rowan, 345 So. 2d 1014 (La. Ct. App. 2d Cir. 1977).
Or.—Wilkinson v. Carpenter, 277 Or. 557, 561 P.2d 607 (1977).

5 La.—Daniel v. Thigpen, 194 La. 522, 194 So. 6 (1940).
Miss.—McCreight v. W.W. Scales & Co., 134 Miss. 303, 99 So. 257 (1924).

6 La.—Daniel v. Thigpen, 194 La. 522, 194 So. 6 (1940).
Utah—Folsom v. Asper, 25 Utah 299, 71 P. 315 (1903).

7 Cal.—National Collection Agency, Inc. v. Fabila, 93 Cal. App. 3d Supp. 1, 155 Cal. Rptr. 356 (App. Dep't Super. Ct. 1979).

8 Mont.—Neel v. First Federal Sav. and Loan Assoc. of Great Falls, 207 Mont. 376, 675 P.2d 96 (1984).
No substantial impairment
An amendment to a state's homestead exemption, which increased the exemption amount from $10,000 to $50,000, did not impose a substantial impairment on a creditor's rights, and thus did not violate the Contract Clause, although it may have modified the expectations of the parties, where it did not substantially disrupt

the parties' reasonable expectations under the contract, since the homestead exemption had limited creditors since 1850.
U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009).

9 U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009).

10 § 633.

11 U.S.—In re Varanasi, 394 B.R. 430 (Bankr. S.D. Ohio 2008).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

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a. General Considerations

(3) Specific Contracts or Laws

§ 636. Redemption laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2772, 2775

Statutes creating or increasing the right to redeem foreclosed property after sale are void as to the original parties to prior mortgages, but laws merely altering the procedure for the enforcement of mortgages or requiring reasonable notice to persons entitled to redeem are valid.

A statute which gives mortgagors a right to redeem property sold on foreclosure, where no right of redemption previously existed, or enlarges an existing right of redemption, or extends the period of redemption formerly allowed, is void, as impairing the obligation of the contract, as to sales under mortgages executed before its passage.[1] This rule, however, is applied only for the protection of the mortgagee, as the party to the original mortgage contract, and not for the protection of an independent purchaser at the foreclosure sale, as against whom the mortgagor is entitled to such rights of redemption as are prescribed by the law in force at the time of the sale.[2]

If the mortgagee purchases the property for less than the amount of the mortgage debt, the mortgagee holds it as mortgagee and not as purchaser, and the mortgagee's rights with respect to redemption are governed by the law in force at the time the mortgage was executed.[3] However, if the amount bid or paid by the mortgagee equals or exceeds the mortgage indebtedness, the mortgagee then holds, not as mortgagee but as purchaser, and therefore is subject to the right of the mortgagor to redeem under a law enacted after the execution of the mortgage and before the sale.[4]

A statute is not unconstitutional which merely alters the procedure for the enforcement of a mortgage, without impairing the substantial rights of the mortgagee,[5] and the purchaser at a foreclosure sale may be required by a statute passed subsequent thereto to give notice, before taking a deed, to persons entitled to redeem provided a reasonable time remains in which to give such notice before the expiration of the redemption period.[6]

There is authority to the effect that a statute which reduces the mortgagor's redemption period,[7] or entirely cancels the mortgagor's right to redeem under certain circumstances,[8] is void as to mortgages executed before its passage.

Footnotes

1 Iowa—First Trust Joint Stock Land Bank of Chicago v. Arp, 225 Iowa 1331, 283 N.W. 441, 120 A.L.R. 932 (1939).
Or.—State ex rel. Akerson Gooch & Co., Inc. v. Hurlburt, 93 Or. 34, 182 P. 169 (1919).
As to constitutionality of redemption laws as emergency moratorium legislation, see § 624.

2 U.S.—Hooker v. Burr, 194 U.S. 415, 24 S. Ct. 706, 48 L. Ed. 1046 (1904).

3 U.S.—Bradley v. Lightcap, 195 U.S. 1, 24 S. Ct. 748, 49 L. Ed. 65 (1904).

4 Ala.—Jones v. Kelly, 203 Ala. 170, 82 So. 420 (1919).

5 Iowa—Creager v. Johnson, 114 Iowa 249, 86 N.W. 275 (1901).
Acceleration of sale date
A statute which gives mortgagor a new right of redemption within six months after sale, but reduces by six months the time within which sale may be made after suit is brought, is valid.
Mich.—State Sav. Bank v. Mathews, 123 Mich. 56, 81 N.W. 918 (1900).

6 S.D.—Clark Implement Co. v. Wadden, 34 S.D. 550, 149 N.W. 424 (1914).

7 Me.—Portland Sav. Bank v. Landry, 372 A.2d 573 (Me. 1977).

8 N.J.—Fidelity Union Trust Co. v. Multiple Realty & Const. Co., 131 N.J. Eq. 527, 26 A.2d 155 (Ch. 1942).

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§ 637. Regulation of court procedure as an impairment of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765

The legislature may, without impairing the obligation of contracts, regulate the procedure in courts of justice including matters relating to conditions precedent, pleadings, and modes and conduct of trial, with respect to past and future contracts, provided the substantial rights of the parties are not changed.

In accordance with the rule to the effect that a statute merely affecting the remedy for the enforcement of existing contracts without changing the substantial rights of the parties is not void as impairing the obligation of contracts, the legislature may constitutionally regulate the procedure in courts of justice with respect to past as well as future contracts without running counter to the constitutional prohibition against impairing the obligation of contracts[1] as long as the substantial rights of the parties are not changed.[2]

Conditions precedent.

Statutes creating[3] or abolishing[4] conditions precedent to the bringing of actions are not void as impairing the obligation of contracts where they do not have the effect of destroying the right or preventing suit thereon. However, the legislature may not under the guise of changing the remedy impair the obligation of a contract by arbitrarily imposing a condition precedent to enforcement.[5]

Rules of pleading.

Statutes prescribing the rules of pleading are not unconstitutional as applied to prior contracts[6] even though they impose on the party seeking to enforce a contract additional requirements as to the facts to be alleged.[7]

Mode and conduct of trial.

A statute changing the mode and conduct of trial is not void as impairing the obligation of contracts if it does not have the effect of destroying the right.[8]

Footnotes

1 Cal.—National Collection Agency, Inc. v. Fabila, 93 Cal. App. 3d Supp. 1, 155 Cal. Rptr. 356 (App. Dep't Super. Ct. 1979).
Conn.—Chieppo v. Robert E. McMichael, Inc., 169 Conn. 646, 363 A.2d 1085 (1975).
Fla.—Morris v. American Bankers Ins. Co. of Fla., 184 So. 2d 906 (Fla. 3d DCA 1966).
As to vested rights in rules of practice and procedure, generally, see § 500.
As to the withdrawal or change of remedies, generally, see § 620.

2 La.—Shreveport Long Leaf Lumber Co. v. Wilson, 195 La. 814, 197 So. 566 (1940).
N.C.—Byrd v. Johnson, 220 N.C. 184, 16 S.E.2d 843 (1941).
Wis.—Onsrud v. Kenyon, 238 Wis. 496, 300 N.W. 359 (1941).

3 Iowa—Amana Soc. v. Colony Inn, Inc., 315 N.W.2d 101 (Iowa 1982).

4 Ark.—King v. Dickinson-Reed-Randerson Co., 168 Ark. 112, 269 S.W. 365 (1925).

5 Fla.—State ex rel. Payson v. Chillingworth, 122 Fla. 339, 165 So. 264 (1936).

6 Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Blind, 182 Ind. 398, 105 N.E. 483 (1914).
Ky.—Lowther v. Peoples Bank, 293 Ky. 425, 169 S.W.2d 35 (1943).
As to vested rights in rules of pleading, see § 500.

7 Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Blind, 182 Ind. 398, 105 N.E. 483 (1914).

8 **Change in method of selecting jury held valid**
Md.—Baltimore & O. R. Co. v. Maughlin, 153 Md. 367, 138 A. 334 (1927).
Grant of divorce without jury trial
Ga.—Dickson v. Dickson, 238 Ga. 672, 235 S.E.2d 479 (1977).

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§ 638. Jurisdiction, terms of court, and venue

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765

The legislature may transfer the jurisdiction of one court to another, suspend or abolish certain courts, or change the time for holding terms of court.

An act transferring the jurisdiction of one court to another is not unconstitutional as impairing the obligation of contracts because it is merely a regulation of the tribunal to enforce the contract, not a regulation of the contract itself.[1] On the other hand, the legislature cannot, consistently with the prohibition against the impairment of the obligation of contracts, abolish a court without affording opportunities to the parties to assert rights vested by litigation in the court.[2]

A mere enlargement of the scope of the powers or duties of a tribunal does not fall within the constitutional prohibition.[3] A statute changing the venue of an action is not void as impairing the obligation of contracts notwithstanding the contract in question calls for payment in a county other than that in which venue is laid by the statute.[4]

Footnotes

1 N.C.—City of High Point v. Brown, 206 N.C. 664, 175 S.E. 169 (1934).
Tex.—Beaumont Petroleum Syndicate v. Broussard, 64 S.W.2d 993 (Tex. Civ. App. Beaumont 1933).

2 Pa.—Com. ex rel. Kelley v. Brown, 327 Pa. 136, 193 A. 258 (1937).

3 Pa.—Kunze v. Duquesne City, 126 Pa. Super. 43, 190 A. 538 (1937).

4 Iowa—Grain Belt Ins. Co. v. Gentry, 208 Iowa 21, 222 N.W. 855 (1929).

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§ 639. Process and notice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765

Statutes relating to the service of process as well as statutes requiring or regulating the manner of, or reducing the time for, the giving of notice in judicial proceedings have been held valid as to prior contracts.

A statute substituting one officer for another as the person to be served with process in actions against foreign corporations is not invalid as impairing the obligation of contracts previously made.[1]

Statutes requiring,[2] or dispensing with the requirement of,[3] or regulating the manner of,[4] or reducing the time for,[5] the giving of notice of judicial proceedings are not invalid as to proceedings on contracts or mortgages made before their passage. On the other hand, it has been held that the retroactive application of a statute requiring the giving of a notice to cure would deprive the noteholder of a right it possessed before the statute was adopted, i.e., the right to sue without giving a notice to cure.[6]

Footnotes

1 N.Y.—Johnston v. Mutual Reserve Fund Life Ins. Co., 43 Misc. 251, 87 N.Y.S. 438 (N.Y. City Ct. 1904), aff'd, 45 Misc. 316, 90 N.Y.S. 539 (App. Term 1904), aff'd, 104 A.D. 544, 93 N.Y.S. 1048 (1st Dep't 1905) and aff'd, 104 A.D. 550, 93 N.Y.S. 1052 (1st Dep't 1905) and aff'd, 104 A.D. 629, 93 N.Y.S. 1062 (1st Dep't 1905) and aff'd, 104 A.D. 559, 93 N.Y.S. 1059 (1st Dep't 1905).

2 N.J.—Pennsylvania Co. for Insurance of Lives v. Marcus, 89 N.J.L. 633, 99 A. 405 (N.J. Ct. Err. & App. 1916).

3 N.Y.—Lowe v. Sheldon, 276 N.Y. 1, 11 N.E.2d 329 (1937).

4 Wyo.—In re Gillette Daily Journal, 44 Wyo. 226, 11 P.2d 265 (1932), supplemented, 45 Wyo. 173, 17 P.2d 665 (1933).

5 N.D.—Orvik v. Casselman, 15 N.D. 34, 105 N.W. 1105 (1905).

6 Iowa—Ipalco Emp. Credit Union v. Culver, 309 N.W.2d 484 (Iowa 1981).

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§ 640. Rules and procedure pertaining to parties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2765

The legislature may ordinarily change the rule with respect to parties necessary to a cause of action.

Ordinarily, statutes which change the rule as to parties necessary to the determination of a controversy may take effect on prior as well as subsequent contracts because the remedy only is affected.[1] This rule has been applied to various particular statutes,[2] including statutes which have required the sureties on a bond to be made parties to a suit for an accounting and for judgment on the bond,[3] and have precluded actions against obligors on mortgage bonds unless joined as parties in the proceedings for the foreclosure of the mortgage.[4] On the other hand, a statute was declared void which precluded bondholders from bringing suits against the obligor unless joined by other bondholders.[5]

According to some authority, as applied to policies issued before the enactment thereof, a statute making an insurer a proper party defendant in an action against the insured is unconstitutional as an impairment of the obligation of contracts,[6] but it has

also been held that a statute giving the injured person a direct right of action against the insurer under such circumstances is not within the prohibition.[7]

The application of a statute authorizing a state to intervene in an action initiated by a land trust seeking to enjoin a landowner from violating a conservation easement was not fundamentally unfair, nor did it violate the contract clauses of the Maine and United States Constitutions. The enactment of the statute did not substantially impair the contractual relationship between the owners and the trust, nor did it affect the express terms of the conservation easement deed, or the obligations of owners under that agreement, or the limits placed on their use of the land.[8]

Footnotes

1 Minn.—Tompkins v. Forrestal, 54 Minn. 119, 55 N.W. 813 (1893).

2 Ala.—Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923).
Conn.—Gilpatric v. National Sur. Co., 95 Conn. 10, 110 A. 545 (1920).

3 N.Y.—Cookman v. Stoddard, 132 A.D. 485, 116 N.Y.S. 901 (4th Dep't 1909), aff'd, 200 N.Y. 563, 93 N.E. 1118 (1911).

4 N.J.—Lapp v. Belvedere, 116 N.J.L. 563, 184 A. 837, 115 A.L.R. 429 (N.J. Ct. Err. & App. 1936).

5 Cal.—Selby v. Oakdale Irr. Dist., 140 Cal. App. 171, 35 P.2d 125 (3d Dist. 1934).

6 Wis.—Pawlowski v. Eskofski, 209 Wis. 189, 244 N.W. 611 (1932).

7 U.S.—Hudson v. Georgia Casualty Co., 57 F.2d 757 (W.D. La. 1932).
La.—Robbins v. Short, 165 So. 512 (La. Ct. App. 1st Cir. 1936).

8 Me.—Windham Land Trust v. Jeffords, 2009 ME 29, 967 A.2d 690 (Me. 2009).

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b. Actions

§ 641. Rules of evidence in actions for the protection of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2768

Provided the substantial rights of the parties are not changed thereby, statutes establishing or changing rules of evidence may be made applicable to prior contracts without impairing their obligation.

Rules of evidence, in their proper and essential characteristics, relate not to the obligation of contracts but to the remedy for their enforcement, and therefore, speaking generally, statutes establishing or changing such rules may be made applicable to prior contracts without impairing their obligation.[1] Accordingly, various statutes creating or changing rules of evidence have been sustained as to prior transactions.[2] However, subsequent legislation which effects changes in the rules of evidence which amounts to a substantial change in the contractual obligation impairs the obligation of contracts.[3]

Presumptions.

As a general rule, statutes making a fact proved presumptive evidence of another fact may be made applicable to prior contracts without impairing their obligation,[4] and in applying this rule, various statutes have been found valid.[5] In like manner, a statute creating a presumption may be repealed, and the repeal may be made effective as to prior contracts.[6]

Footnotes

1 Ala.—Miller-Brent Lumber Co. v. State, 210 Ala. 30, 97 So. 97 (1923).
Tex.—American Indem. Co. v. McCann, 27 S.W.2d 354 (Tex. Civ. App. San Antonio 1930), writ granted, (Oct. 29, 1930) and modified on other grounds, 45 S.W.2d 174 (Tex. Comm'n App. 1932).
As to vested rights in rules of evidence, see § 503.

2 Ky.—Eckles v. Wood, 143 Ky. 451, 136 S.W. 907 (1911).
Contract entered into after passage of Act
A Medical Malpractice Act burden-of-proof provision, which required a patient to present expert medical testimony to support a medical negligence claim, did not violate the Contract Clause by impairing the patient's right to contract where the alleged contract between the patient and a physician was entered into well after the passage of the Medical Malpractice Act.
Ark.—Haase v. Starnes, 323 Ark. 263, 915 S.W.2d 675 (1996).

3 N.Y.—Ralph v. Cronk, 150 Misc. 69, 268 N.Y.S. 429 (Sup 1934), aff'd, 241 A.D. 907, 271 N.Y.S. 1042 (4th Dep't 1934), order amended on other grounds, 241 A.D. 915, 271 N.Y.S. 1047 (4th Dep't 1934) and aff'd, 266 N.Y. 428, 195 N.E. 139 (1934).

4 U.S.—Virginia & West Virginia Coal Co. v. Charles, 254 F. 379 (C.C.A. 4th Cir. 1918).

5 U.S.—Reitler v. Harris, 223 U.S. 437, 32 S. Ct. 248, 56 L. Ed. 497 (1912).
Dying in line of duty
A constitutional provision proscribing any law impairing the operation of a contract was not violated by a statute creating a rebuttable presumption that a firefighter who dies of a disease of the lungs, hypertension, or heart disease did so in the line of duty and in the course and scope of employment since the statute has merely declared a rule of evidence.
Tenn.—Brewer v. Aetna Life Ins. Co., 490 S.W.2d 506 (Tenn. 1973).

6 U.S.—Virginia & West Virginia Coal Co. v. Charles, 254 F. 379 (C.C.A. 4th Cir. 1918).

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§ 642. Judgment and judgment liens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2769

It is beyond the power of the legislature to take away all remedy for, or place unreasonable restrictions on, the enforcement of judgments obtained on prior contracts.

It is beyond the power of the legislature to take away all remedy for the enforcement of a judgment obtained on a prior contract as this would impair the obligation of the contract itself.[1] Accordingly, a statute which so modifies the judgment as to impair the rights inherent in the contractual obligations on which the judgment was grounded,[2] or which places unreasonable restrictions on the enforcement of such a judgment,[3] is unconstitutional. A statute, however, changing the remedy for the enforcement of an existing judgment without changing the substantial rights of the parties is not unconstitutional as impairing the obligation of contracts.[4]

A judgment lien is merely a part of the remedy, and as such, it may be modified or abolished,[5] such as by providing that it shall cease after a lapse of time.[6]

Footnotes

1 N.Y.—Weinstein v. McElligott, 256 A.D. 307, 10 N.Y.S.2d 320 (2d Dep't 1939), judgment rev'd on other grounds, 281 N.Y. 605, 22 N.E.2d 171 (1939).

2 Pa.—Commissioners of Sinking Fund of City of Philadelphia v. City of Philadelphia, 324 Pa. 129, 188 A. 314, 113 A.L.R. 202 (1936).

3 U.S.—Lamb v. Powder River Live Stock Co., 132 F. 434 (C.C.A. 8th Cir. 1904).

4 Utah—Caldwell v. Erickson, 61 Utah 265, 213 P. 182 (1923).

5 U.S.—Bank of U.S. v. Longworth, 2 F. Cas. 707, No. 923 (C.C.D. Ohio 1829).

6 **Judgment for alimony or child maintenance**
Neb.—Hidy v. Hidy, 184 Neb. 527, 169 N.W.2d 285 (1969).

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b. Actions

§ 643. Mode of levying executions; impairment of contract obligations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2740, 2745, 2760, 2761, 2769, 2772, 2773, 2775

The legislature may modify the mode of levying executions without impairing the obligation of contracts, and it is generally held that the legislature may authorize judicial sales on credit longer than previously allowed.

Since execution pertains to the remedy, statutes modifying the mode of levying it, whether enlarging or restricting the creditor's rights, are not unconstitutional as impairing the obligation of contracts.[1]

Sale on execution or under decree.

A statute authorizing a mortgagor to enjoin the confirmation of a sale of property under the power in a trust deed because of inadequacy of the sale price does not impair the obligation of prior contracts.[2] A statute providing that judicial sale of partnership assets may be dispensed with does not impair contract rights.[3]

Footnotes

1 N.Y.—Gotham Nat. Bank of New York v. Strunsky, 162 Misc. 673, 293 N.Y.S. 961 (Sup 1936).
Pa.—West Arch Bldg. & Loan Ass'n v. Nichols, 303 Pa. 434, 154 A. 703 (1931).

2 N.C.—Woltz v. Asheville Safe Deposit Co., 206 N.C. 239, 173 S.E. 587 (1934).

3 N.Y.—Dow v. Beals, 149 Misc. 631, 268 N.Y.S. 425 (Sup 1933).

16A C.J.S. Constitutional Law § 644

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PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

3. Civil Remedies and Procedure for Preventing or Remedying Impairment of Contractual Obligations

b. Actions

§ 644. Costs and attorney's fees; obligation of prior contracts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2769, 2770

The legislature may regulate costs and fees, including attorney's fees, without impairing the obligation of prior contracts.

Statutes regulating costs and fees,[1] including attorney's fees,[2] affect generally the remedy only and are therefore not unconstitutional as impairing the obligation of prior contracts. This is so even if the contract specifically provides for an award of costs or attorney's fees[3] although it has also been held that when the right to recover or not recover attorney's fees is provided by contract, it cannot constitutionally be impaired by subsequent legislation which attempts to restrict, expand, or eliminate that contractual right.[4]

There is no constitutional impairment of contract impediment to applying the interest and attorney's fees provisions of a statute even though the parties' contract does not expressly provide for interest and attorney's fees.[5] On the other hand, it has been held that the statutory imposition of attorney's fees where none were bargained for materially changes the binding force of an agreement and thereby impairs the obligation of such contract.[6] A statute eliminating the necessity of personal demand for

payment theretofore prerequisite to the recovery of attorney's fees would be unconstitutional if applicable to prior contracts.[7] Also, it has been stated that the retroactive application of a particular statute would deprive a noteholder of a right it possessed before the statute was adopted, i.e., the right to attorney's fees.[8]

The invalidation of an attorney's fees waiver in a marital settlement agreement in the context of disputes concerning child custody did not amount to an unconstitutional impairment of contract as the waiver provision was void due to judicial, as opposed to legislative, action.[9]

An amendment to the attorney's fees provision of a workers' compensation law, which stated that fees are allowed only if insurer or self-insured employer refused to pay on express ground that injury or condition for which compensation was claimed was not compensable or otherwise did not give rise to entitlement to compensation, did not create an unconstitutional elimination of vested rights or impairment of contract obligations as applied to a claimant since the claimant was not entitled to an attorney's fees award under the former version of the attorney's fees provision.[10]

Footnotes

1 Ohio—Flory v. Cripps, 132 Ohio St. 487, 8 Ohio Op. 484, 9 N.E.2d 500 (1937).

2 Ky.—Central Kentucky Production Credit Ass'n v. Smith, 633 S.W.2d 64 (Ky. 1982).

No alteration of substantive rights and obligations

The retroactive application of Maryland's good faith statute would not violate the Contract Clause, even though it allowed a plaintiff to seek expenses and litigation costs, including reasonable attorney's fees, as well as interest on those costs, such that the potential costs of litigation from breaches of contract were higher; the substantive rights and obligations of the parties were not altered by the statute, which only operated if a court or jury first found that the insurer breached the insurance contract; the contract remained legally enforceable with no change to the bargained-for terms; and even assuming a substantial impairment, the statute was permissible as a legitimate exercise of the State's police power.

U.S.—Cecilia Schwaber Trust Two v. Hartford Acc. and Indem. Co., 636 F. Supp. 2d 481 (D. Md. 2009).

3 Cal.—Coast Bank v. Holmes, 19 Cal. App. 3d 581, 97 Cal. Rptr. 30 (4th Dist. 1971).

Date of judgment controlling

A statute which provides for the allowance of attorney's fees in certain contract situations was applicable to a note and mortgage which contained provisions allowing attorney's fees to the mortgagee even though the note and mortgage were executed and delivered prior to the effective date of the statute, in that the statute was remedial in nature, and thus, the controlling date for application was the date of judgment and not the date of execution of the instrument, and no contract rights of the parties were impaired since a public policy bar to the enforcement of the express terms of the writing was removed.

Ky.—Central Kentucky Production Credit Ass'n v. Smith, 633 S.W.2d 64 (Ky. 1982).

4 Fla.—Xanadu of Cocoa Beach, Inc. v. Lenz, 504 So. 2d 518 (Fla. 5th DCA 1987).

5 Okla.—Oryx Energy Co. v. Plains Resources, Inc., 1994 OK CIV APP 185, 918 P.2d 397 (Ct. App. Div. 2 1994).

6 Fla.—Commodore Plaza at Century 21 Condominium Ass'n, Inc. v. Cohen, 378 So. 2d 307 (Fla. 3d DCA 1979).

7 Cal.—Sammon v. Wing, 105 Cal. App. 689, 288 P. 711 (3d Dist. 1930).

8 Iowa—Ipalco Emp. Credit Union v. Culver, 309 N.W.2d 484 (Iowa 1981).

9 Cal.—In re Marriage of Joseph, 217 Cal. App. 3d 1277, 266 Cal. Rptr. 548 (1st Dist. 1990).

10 Or.—Bailey v. Boeing Co., 141 Or. App. 200, 917 P.2d 72 (1996).